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FILE TITLE:	SERIES
Hunting	Rural Affairs.
	PART 5.
PART BEGINS: 18 December 04	PART ENDS: 5 MAY 05
	CAB ONE

LABOUR ADMINISTRATION

PREM 49/4339

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T.S.O. Order No. N0064510 3/98 C5 59064

PART

CLOSED

DATE CLOSED	5 MAY 2005

Series : **RURAL AFFAIRS**

File Title : **HUNTING**

Part : **5**

Date	From	To	Subject	Class	Secret
20/12/2004	PD(KEG)		Hunting Leaflet	U	
12/01/2005	PD(KEG)		Hunting Leaflet	U	
20/01/2005	PD(KEG)	PM	Hunting Court Case	C	
24/01/2005		Ch.Staff	from John Jackson: hunting	U	
26/01/2005		Ch.Staff	from John Jackson: hunting - lcorrespondence with Alun Michael	U	
01/02/2005	PD(KEG)	PM	Hunting	C	
09/02/2005	PD(KEG)	PM	Hunting - Meeting with Attorney General before Cabinet	U	
10/02/2005	PD(KEG)	AGO	(Email) (M) Hunting - Meeting between PM and Attorney General	C	
10/02/2005	Cab Off	HO	Hunting with Dogs - Civil Contingency Planning	R	
14/02/2005			ECHR challenge - Hunting Bill	U	
14/02/2005	PD(KEG)	PM	Hunting - Legal Challenges	C	
14/02/2005	PD(KEG)	Ch.Staff	Hunting	C	
15/02/2005	Ch.Staff	AGO	Interim Relief	C	
15/02/2005	AGO	Ch.Staff	Interim Relief	C	
16/02/2005	AGO		Hunting Act Challenge - AGO's statement	U	
16/02/2005	HO	GR	(E-mail) Hunting Act	U	
16/02/2005	AGO	chief of staff	Hunting Act challenge	C	
16/02/2005	AGO	Ch.Staff	Draft News Release: Hunting Act Challenge	U	
16/02/2005	HO	HO	Hunting Act Implementation: Plans for this weekend	U	
17/02/2005	AGO	chief of staff	Guidance The Parliament Act challenge	C	
17/02/2005	CPS	PD(KEG)	Hunting - Draft Interim Guidance	U	
17/02/2005			From ACPO: The Hunting Act 2004 - National Tactical Consideration	C	
17/02/2005			Undated From ACPO: The Hunting Act 2004: National Strategic Con	U	
17/02/2005	TSY SOL	Ch.Staff	Hunting Act (Approved judgement of Court of Appeal)	U	
17/02/2005	Ch.Staff	PM	Hunting	C	
18/02/2005	DEFRA	Ch.Staff	Personal: Note about hunting	U	
21/02/2005	PD(KEG)		British wildlife management	C	
25/02/2005			Letter from John Jackson	U	
28/02/2005	PD(KEG)		Red deer welfare equation	C	
02/03/2005	PD(KEG)		Edmund Marriage Wounding rates horses accompanying hounds on	U	
02/03/2005	Ch.Staff		To John Jackson: Court of Appeal's judgement	U	
02/03/2005		Ch.Staff	John Jackson - Countryside Alliance	U	
04/03/2005	HMT	HOL	Jackson and others v HM attorney general	C	
04/03/2005	PD(KEG)		Post of deer initiative chairman efficient casualties services for the d	C	
08/03/2005	DEFRA		Impact of hunting letter to Edmund Marriage British Wildlife Manage	U	
08/03/2005		chief of staff	CA Press Release from John Jackson - Hunt Saboteurs continue act	U	
09/03/2005	HO	PD(KEG)	Offences under the Hunting Act	R	
10/03/2005		Ch.Staff	From John Jackson: Parliament Act Case	U	
11/03/2005	PD(KEG)	PM	Hunting	R	
15/03/2005	PD(KEG)		Hunting Act Legal challenges	C	
22/03/2005		Ch.Staff	From John Jackson: DPP guidance on prosecutions under Hunting	C	
07/04/2005		Ch.Staff	From John Jackson: Likely that third challenge to the Hunting Act wil	C	
19/04/2005		PD(KEG)	From John Jackson: Applications seeking to quash Hunting Act	C	
05/05/2005	PD (KG)	HO	Hunting - Recorded Offence	U	

Rural Affairs – Hunting

1. Go
2. Ge

Kar[redacted] Lovesey

From: Kate Gross
Sent: 05 May 2005 11:56
To: Matrix Filing
Subject: FW: Hunting: Recorded Offence

-----Original Message-----
From: Kate Gross
Sent: 05 May 2005 11:55
To: 'james.standing@homeoffice.gsi.gov.uk'
Cc: 'james.bradley@defra.gsi.gov.uk';
Subject: Hunting: Recorded Offence

You sent me advice some time ago on the issue of whether to lay an SI to make hunting a recordable offence. I also had a separate personal minute from Alun Michael.

I put both to the Prime Minister just before the election was called, and he has decided that a SI should not be laid this summer. The position could be reviewed following the end of next year's hunting season, looking at whether there would be operational benefit for the police in changing the current situation. But he was clear that no change should be made at present and until the Police were clear it was necessary.

If you would like I can write formally once your Ministers are reappointed.

Kate

01718315779

Keg
NO
cc taken

Tel: 020 7831 5775
Fax: 020 7831 5779
Email: john.jackson@mishcon.co.uk

J B H Jackson
Summit House
12 Red Lion Square
LONDON WC1R 4QD

Kle – noresponse
KG
28/4

FAX NO: 020 7839 9044 (Total Pages: 1)

19th April 2005

Ms Kate Gross
10 Downing Street
LONDON
SW1A 2AA

Dear Kate,

Thank you for your letter of 14th April.

In case you have not already been informed, Clifford Chance yesterday issued at Court on behalf of Francis Derwin (who owns one of the largest horse dealerships in Ireland) and others an application seeking an order quashing the Hunting Act, alternatively a declaration that the Hunting Act is of no effect, and/or that it is unlawful to apply the hunting ban contained in the Act. The grounds on which their application is based are that the ban on hunting introduced by the Hunting Act infringes community law rights relating the free movement of goods between Member States, the right to receive services in other Members States and the right to seek and take up employment in other Member States. The Court is being asked to agree that the case be heard at the same time as the Human Rights Act challenge since much of the evidence, particularly that relating to proportionality, is the same in both cases.

I hope we can stay in contact as this new scenario develops.

John Jackson

Tel: 020 7831 5775
Fax: 020 7831 5779
Email: john.jackson@mishcon.co.uk

J B H Jackson
Summit House
12 Red Lion Square
LONDON WC1R 4QD

File KEG Response

FAX NO: 020 7930 9572 (Total Pages: 1)

7th April 2005

Jonathan Powell Esq
The Prime Minister's Chief of Staff
10 Downing Street
LONDON
SW1A 2AA

Dear Jonathan,

To keep you in the picture, it now seems very likely that a third challenge to the Hunting Act will come before the courts. I understand the principle complainants will be breeders of and dealers in horses in the Republic of Ireland who sell to the English hunting community. They believe that the Hunting Act will have a severe effect on their business, the restrictions imposed by the Act are unjustified and that the Act is therefore inconsistent with community law and liable to be set aside by the courts.

The complainants are being advised by Clifford Chance and leading Counsel and, with our support, are seeking agreement from the Attorney General that their case is considered at the same time as our Human Rights challenge. It is possible that the question of Interim Relief (suspension of the Act) could arise meaningfully as a result of this challenge. In that context, I am looking forward to your reply to my letter of 22nd March.

Yours,

John Jackson

AG

– Prohibits free movement under ECHR. Feeble challenge. But serious points. Advantage in dealing with at same – May/June.

– Incompatibility with EU Law does give rise to interim relief. Theoretically a possibility.

– Now – IR vs. Autumn.

CLIFFORD
CHANCE

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FAX COUNTRY/NUMBER
0207 210 3410

DATE
6 April 2005

NUMBER OF PAGES INCLUDING THIS PAGE
5

TIME SENT

YOUR REFERENCE

OUR REFERENCE
JAA/C6609/00029/EZM

TO
H.M. Attorney General
c/o The Treasury Solicitor

FROM
Clifford Chance LLP

SENDER FAX:

DIRECT DIAL: 0207 006 8128

H.M. Attorney General
The Legal Secretariat to the Law Officers
0207 271 2430

Secretary for State of Environment, Food and Rural Affairs
c/o The Solicitor to the Department for Environment, Food and Rural Affairs
0207 238 5727

COPY TO
Allen & Overy LLP
(Ref: HAC/HAP)

FAX NUMBER FOR COPIES
0207 330 9999

Please see attached.

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CHANCE

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YOUR REFERENCE

IN REPLY PLEASE QUOTE
JAA/C6609/00029/EZM

DIRECT DIAL
0207 006 8128

DATE
6 April 2005

H.M. Attorney General
c/o The Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London
SW1 9JS

H.M. Attorney General
The Legal Secretariat to the Law Officers
Attorney General's Chambers
9 Buckingham Gate
London SW1E 6JP

Secretary of State for Environment, Food and Rural Affairs
c/o The Solicitor to the Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London
SW1P 3JR

Dear Sirs

EU Hunting Challenge

We act for a number of persons with interests in cross-border hunting-related activities between the UK and other Member States of the EU. The nature of those activities includes, principally:

(a) the breeding and selling in Ireland of horses for hunting and greyhounds for coursing, and the purchase of such animals for onward sale in England and Wales;

(b) the participation of EU citizens (as recipients of services) in fox and stag hunting in England and Wales;

(c) the provision of services to such EU citizens, including the hiring of horses, the sale of tack and equipment and the provision of accommodation; and

(d) the employment of EU citizens in hunting-related jobs in England and Wales.

Each of our clients has, therefore, been accustomed to exercising the free movement rights guaranteed by the Treaty establishing the European Community, in particular by Article 28 (free movement of goods), Article 39 (free movement of workers) and Article 49 (freedom to provide and to receive services).

The entry into force of the Hunting Act 2004 on 18 February 2005 has had or will have the effect of severely restricting, and in some cases entirely preventing, the exercise of these fundamental freedoms under EC law. Whilst there may be circumstances in which a restriction on the exercise of such freedoms is capable of being justified, our clients take the view that those circumstances do not exist and that the Hunting Act 2004 is consequently inconsistent with Community law and liable to be set aside or disapplied by the courts.

We write in order to notify you of our intention to commence proceedings for judicial review of the decision to adopt and bring into force the Hunting Act 2004, and to seek your agreement to a procedural course that will enable the claim to be sensibly and expeditiously brought before the Administrative Court.

We are aware of the claims that have already been brought under the Human Rights Act 1998 by the Countryside Alliance (represented by Allen & Overy LLP) and by Brian Friend and Hugh Thomas, litigants in person. The proposed claim is distinct because the nature of the claimants and of the rights asserted is different. We have however been granted access to the detailed grounds of challenge and to the evidence filed on behalf of the Countryside Alliance in those proceedings.

Having studied those documents, and on the assumption that you propose to resist the proposed claim, we consider that:

(1) The proposed claim overlaps to a considerable extent with that brought by the Countryside Alliance, particularly where the lack of any objective justification for the Act is concerned.

(2) It is plainly sensible, for this and for other reasons, that the two claims be considered together. We understand that the Countryside Alliance's claim has already been set down for hearing between 23 and 27 May 2005.

(3) In the interests of expedition and procedural economy, the proposed claim will rely upon but not seek to duplicate the evidence filed on behalf of the Countryside Alliance (in particular the witness statement of Baroness Mallalieu) concerning the lack of justification for the Act.

(4) The additional evidence will be limited to the service of a number of short witness statements, which we do not believe will be contentious, outlining the impact of the Act on the exercise of the free movement rights referred to above. We envisage that those statements will deal, in particular, with:

- the impact of the ban on Irish breeders and dealers of horses for hunting and of greyhounds, together with those who purchase from them in England and Wales;
- the impact of the ban on individuals from other EU Member States who have engaged in fox-hunting and deer-hunting in England and Wales;
- the impact of the ban on providers of hirelings and other goods and services to such individuals; and
- the impact of the ban on the employment of EU citizens in hunting-related jobs.

The principal purpose of those statements will be to demonstrate that the free movement rights to which we have referred are engaged, with the result that the burden of justifying the ban as proportionate will fall upon your clients.

We will, in addition, fully set out the legal case based on EC law in the Detailed Grounds of Challenge.

The additional time required for oral argument on the issues raised by the proposed claim is unlikely to exceed one day.

Accordingly, we invite you to agree to the following course:

- The claim (including evidence and grounds) to be served by 18 April. The Detailed Statement of Grounds to serve as skeleton argument for the hearing.
- Your Acknowledgment of Service to be served by 3 May. No objection be taken to the grant of permission to apply for judicial review; alternatively, the question of permission to be held over to the substantive hearing on 23 - 27 May.
- Your client's evidence in response (if so advised) and Detailed Grounds of Resistance to be served by 16 May, i.e. 28 days after receipt of the claim. The Detailed Grounds of Resistance to serve as skeleton argument.
- Any outstanding matters to be dealt with at the CMC which we understand has been fixed in the Countryside Alliance case for 22 April.

We have spoken to Allen & Overy LLP who have confirmed that they have no objection to our claim being heard at the same time as the substantive hearing on 23 - 27 May nor to any outstanding matters being dealt with at the CMC on 22 April.

CLIFFORD
CHANCE

LIMITED LIABILITY PARTNERSHIP

We trust that you will be able to confirm your consent to the course proposed above and must ask, in any event, for a substantive reply by 4 p.m. on Monday, 11 April.

Yours faithfully

Clifford Chance LLP

Clifford Chance LLP

cc Allen & Overy (Ref: HAC/HAP)

Tel: 020 7831 5775
Fax: 020 7831 5779
Email: john.jackson@mishcon.co.uk

J B H Jackson
Summit House
12 Red Lion Square
LONDON WC1R 4QD

FAX NO: 020 7930 9572 (Total Pages: 1)

22nd March 2005

Jonathan Powell Esq
The Prime Minister's Chief of Staff
10 Downing Street
LONDON
SW1A 2AA

Dear Jonathan,

As you know, we have been pressing the Attorney General to give the DPP guidance that, following the decision by the House of Lords to hear the appeal on the Parliament Act case, no prosecutions should be commenced under the Hunting Act until the legal position is clear. We have heard today that, since there are no prosecutions pending, he will not give any undertaking but will keep the position under review on a case by case basis should prosecutions arise. I can understand this but am somewhat surprised by the next and concluding paragraph in his letter which I set out below:-

"The Attorney has also asked me to let you know that in his view, the circumstances since the Act has come into force provide no grounds for the Government to maintain its hitherto neutral stance on the question of interim relief, should your clients decide to apply for it."

If the Attorney General means by this that he would oppose an application for interim relief, there would be little possibility of our applying for it, as we did at the Court of Appeal stage. I should be very grateful for your comments on this as a matter of some urgency.

John Jackson

8

Kar[redacted] Lovesey

From: Kate Gross
Sent: 15 March 2005 14:54
To: Matrix Filing
Subject: FW: HUNTING ACT - LEGAL CHALLENGES

hunting file pls

-----Original Message-----
From: Edmund Marriage [mailto:Patrickfound@btopenworld.com]
Sent: 15 March 2005 14:34
To: Kate Gross
Cc: Ashley Matthews
Subject: FW: HUNTING ACT - LEGAL CHALLENGES

COPY FOR INFORMATION

-----Original Message-----
From: Edmund Marriage [mailto:Patrickfound@btopenworld.com] <mailto:
[mailto:Patrickfound@btopenworld.com]>
Sent: Tuesday, March 15, 2005 1:55 PM
To: Allen and Overy
Subject: FW: HUNTING ACT - LEGAL CHALLENGES

Dear Uzma Younas,

Following our telephone conversation regarding the Hunting Act legal challenges, I would like to make the following contributions:

1. **Proof of Least Suffering within Hunting Methods - Welfare Equation Solution**

Attached is the Red Deer Welfare Equation, on which supporting detailed scientific and common sense criteria are available, to provide the simple proof of least suffering, by featuring the comparative duration of suffering, between hunting and shooting methods.

The scientific input over the past seven years has concentrated on the hunting and shooting of the red deer in the West Country. With the longest identifiable pursuit times (as opposed to search time) and the lowest recorded wounding rates, the Red Deer Welfare Equation provides the benchmark for the comparative suffering of the fox and hare.

I will forward the full report by the end of the week.


Red Deer Welfare Equation - FI...


WELFARE ATION LEAFLET - S

2. **Press Release - Current position - The Hunting Act is Promoting Cruelty and Preventing Kindness**

Setting out the crucial central issues, which need to be understood in order to make effective challenges. Should we protect wildlife or manage wildlife ? Some of the issues are being addressed by British Wildlife Management, including formal complaints to the Charities Commission, the Police (deceit and fraud), Parliamentary Ombudsman (corrupt interference with Burns Inquiry), and Standing Conference to Countryside Sports (the deceitful and

misleading conduct of certain countryside organisations).

Labours Hunting Act - PR - 10t...

3. Re-establishing the moral right of an individual to deploy the most humane methods to kill and manage the wild deer, fox and hare - Ancient Common Law.

The RSPCA state that the following criteria should be met if animals are to be killed:

a. They should be carefully selected before hand.
b. They should be provided with the best prospect of an instantaneous death.
c. They should be killed out of site of other animals.
d. The process should cause the least disturbance to an animals natural environment.

Hunting methods best meet these requirements, shooting does not.

I have taken some considerable trouble to research our most ancient laws relating to domesticated and wild animals.

Ancient Law - A - Gen 1 24 and...

Ancient Law B - Gen 1 26 - Ide...

These two documents are self explanatory. The history involved illustrates that traditional best practice humane slaughter, involving a sharp knife, with animals than can be handled lovingly, without the release of stress hormones, should be common to all so called religious and tribal beliefs.

4. Re-establishing the moral right, and duty of care, to protect lambs, piglets and other domesticated species, together with other important wild species from predation, by vermin or predator species.

The current unsatisfactory position for upland farmers, documented in the e-mail to DEFRA Minister Alun Michael and forwarded separately, deals with the enormous potential lamb losses as a consequence of the two hound limit imposed upon hunts which deploy fox hounds, terriers and shot guns. The Farmers Union of Wales are well placed to provide the evidence and suitable individuals, on whose behalf claims can be made.

5. Re-establishing the moral right, and duty of care, of operating efficient deer casualty services in the West Country.

The e-mail to DEFRA Deer Management Team Leader Ashley Matthews, forwarded separately, is self explanatory.

Deer Casualty Service.doc

I hope that the information provided will give a clearer perspective on why the Hunting Act is promoting cruelty and preventing kindness, and additional methods by which the appropriate evidence can be delivered to the judiciary, to reverse the current appalling situation for wildlife

and people.

Kind regards,

Edmund Marriage - British Wildlife Management.

Please note: Alun Michael and Ashley Matthews e-mails sent separately.

From: Kate Gross
Date: 11 March 2005

PRIME MINISTER

cc: Jonathan Powell
Sally Morgan
Pat McFadden

HUNTING

Court Case

The HoL have said that they will hear the Countryside Alliance's appeal on **13 - 14 July** (the AG's office had written to the HoL supporting the CA's petition on the basis that the Court of Appeal's judgment on the validity of the Parliament Act raised serious constitutional questions).

The HoL will bring together a 9-judge panel to hear the case. Most appeals are heard by a 5-judge panel: the last 9-judge panel was for Part 4 ATCS. This suggests that the Lords recognise the importance of the constitutional issues the case raises. The original Court of 1st Instance judgement gave a wide and helpful interpretation of the potential application of the Parliament Act. The Court of Appeal said, conversely, that the application of the Parliament Act was narrower and it *might* not be valid if it were used to make constitutional changes (such as abolishing the HoL). It is not clear which way the Lords will rule, but the experience of the Terrorism Bill, as well as Hunting, may well inform their judgement. The AG will represent the Govt. He (and many legal/constitutional academics) are clear that the Government has a strong case that there are no constitutional limits on what the power of the elected house, as exercised through the Parliament Act, can do.

There are two practical implications of the HoL decision to hear the case:

- The Countryside Alliance are now able to apply for an injunction suspending the Hunting Act pending the outcome of the HoL case. The Government position on an injunction would remain neutral. The AG advises that the likelihood of the HoL granting an injunction is pretty slim, because the argument we relied on pre-18 February (possible civil disobedience and uncertainty about the validity of the law) doesn't hold up

given that the last month has passed off peacefully, and that the main hunting season is now largely over, reducing the threat of problems between now and July.

- The AG and the DPP will meet next week to review their advice on suspension of prosecutions pending the outcome of the HoL case. The AG is *unlikely* to shift his position but may be prepared to ask the Courts to look at the issue on a case-by-case basis if and when prosecutions arise (there are no prosecutions currently in the pipeline). We will push for this at the least.

The ECHR case will not come before the Court of first Instance until June at the earliest, and anyway has no bearing on the two points above.

Hunting as a recordable offence

Hunting is at present a criminal offence punishable by a fine, leading to a criminal record, but which is not recorded on the police national computer (i.e. not *'recordable'*). The Act contains powers for the SoS to make the offence recordable by laying a SI (subject to negative resolution procedure). Alun had always planned to do this following the end of the hunting season (it seems to have been a mistake by DEFRA which meant the offence wasn't recordable from day 1).

You indicated at Christmas that you did not want hunting to be made a recordable offence. I passed this on to Alun, who feels very strongly that it does need to be made recordable, mainly I think because he has made commitments to Tony Banks and others that this would be done. He and I agreed that we'd review the situation, on advice from the Home Office/Police, once the Act was in place and the hunting season was over.

I now have advice from the HO. They say there is no operational benefit from making the offence recordable, and no cost from not doing so. Making it recordable would not change the prioritisation the police accord to this offence. It would allow the police and courts to access previous convictions more easily via the PNC, but this they can access these records anyway. Given the policing of the Act has gone relatively well so far, the HO have said that they "do not, at the moment, consider that making the offences recordable is a priority for action at the moment", I recommend that we do not bring forward a SI before the start

of the next Hunting season (i.e. this summer) and review again in the Autumn if necessary. **Content?**

Yes! Kate Gross

KATE GROSS

Tel: 020 7831 5775
Fax: 020 7831 5779
Email: john.jackson@mishcon.co.uk

J B H Jackson
Summit House
12 Red Lion Square
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FAX NO: 020 7930 9572 (Total Pages: 1)

10th March 2005

Jonathan Powell Esq
The Prime Minister's Chief of Staff
10 Downing Street
LONDON
SW1A 2AA

DCG - file
Hyde Group
AG has replied.
LEG
22/3/05

Dear Jonathan,

You have probably heard that the House of Lords will hear the Parliament Act case. Nine law lords will sit on 13th and 14th July. We are now writing a further (and fairly strong) letter to the Attorney General pressing the point of no prosecution until we know the outcome of the Parliament Act case and, if relevant, the Human Rights Act case.

The constitutional significance of all this is finally beginning to dawn on people. Awareness of the relationship between the House of Lords and the House of Commons is coming to the forefront of people's minds and was, of course, underlined by what the Prime Minister said to camera last night.

I will continue to keep you posted.

Yours ever,

John Jackson

RESTRICTED - POLICY

Home Office

(D)File - Hunting

MEMORANDUM

From	James Standing APS to Hazel Blears MP Home Office 2 Marsham Street London	Your Ref	
		File Ref	
Tel	020 7035 8775		
Date	9 March 2005		
To	Kate Gross	cc	PS/Alun Michael Gareth Redmond Tyson Hepple Peter Edmundson Jim Nicholson Graham Titcombe Catherine Webster Robert Hill

OFFENCES UNDER THE HUNTING ACT

You asked for Home Office advice on whether offences under the Hunting Act should be made recordable offences.

Decisions on whether to make non-imprisonable offences recordable offences[1] are made on a case by case basis, depending on the nature of the offence and policy objective to be served by the proposal. ACPO has indicated to us that they "expected" the offences to be made recordable. However, they have also stated their priority and resource decisions with regard to operational policing will not be affected one way or the other by the decision.

[1] "Recordable offences" are not he same as "recorded crime". Recorded crime is the total volume of reported crime which the police decide to record in accordance with the National Crime Recording Standard, and which they thus notify to the Home Office (as "notifiable offences") for the purpose of compiling the recorded crime statistics. A recordable offence is one which carries the possibility of imprisonment or is one of about fifty non-imprisonable offences specified in regulations for the purposes of retention in central police records (the PNC) and thus available for checking during operational policing or by the Criminal Records Bureau. Offences are made recordable by means of amendments (negative resolution) to the National Police Records Recordable Offences) Regulations 2000.

RESTRICTED - POLICY

Where ACPO do believe that there is advantage in the proposal is in allowing the courts (through PNC checks) routinely to have knowledge of any relevant previous offences. Knowing that a defendant had a previous conviction for a hunting offence would allow the court to make a more informed sentencing decision in the case of a hardened hare-courser, for example (of which there some very nasty specimens about). It would also prevent "ordinary" hunters with dogs from believing that they were not acquiring a criminal record and from seeing a court-imposed fine as merely "a price worth paying" to continue hunting.

ACPO's position is therefore one of mild support for the proposal, and the Home Office has no objection to it in principle either.

However, the policing of the Act has gone well so far. For example, the large turnout of hunters and supporters on 19 February produced a very low level of disorder. We do not, therefore, consider making the offences recordable a priority for action at the moment, on the principle of not rocking a relatively stable boat. We should also bear in mind that there are still some unresolved legal challenges around.

Currently, anyone convicted of hunting with dogs will get a criminal record, as well as a fine of up to £5,000. Anyone convicted of such an offence will have to declare it when they apply for jobs, firearms licences or to work with children or vulnerable adults. A conviction may also adversely affect a person's ability to obtain employment, insurance and visas. These offences will be monitored by the Home Office through its normal arrangements for the collection and collation of data on court proceedings.

We suggest keeping the issue under review and looking at it again with DeFRA as necessary later this year.

I am copying this note, which has been agreed by Hazel Blears, to Alun Michael's Private Secretary.

Nobel House
17 Smith Square
London SW1P 3JR

Telephone 08459 335577
Email alun.michael@defra.gsi.gov.uk
Website www.defra.gov.uk

defra
Department for Environment
Food and Rural Affairs

Edmund Marriage
British Wildlife Management
Beech Cottage
79 Acreman Street
Sherbourne
DT9 3PH

8th March 2005

From the Office of the Minister for Rural Affairs and Local Environmental Quality
The Rt Hon Alun Michael MP

Dear Edmund,

Thank you for various recent e-mails to me, my Ministerial colleagues, my officials and the Prime Minister about the impact of the Hunting Act.

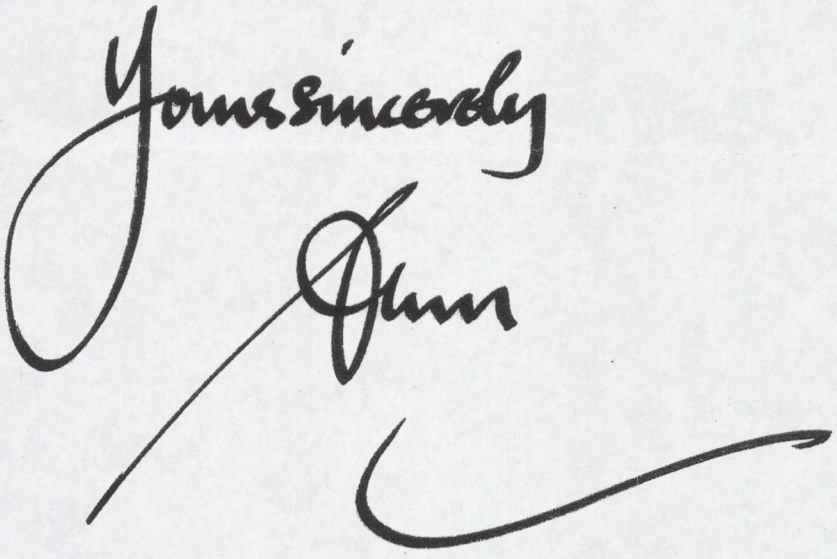
As you are well aware, the Act is the end result of a long process of public and Parliamentary debate and all aspects of this legislation have been through a considerable degree of scrutiny. A great deal of effort was made to find sound basis for a compromise, but those in favour of retaining hunting sought to weaken the proposed registration scheme to allow hunting to continue unrestricted, while those opposed to hunting believed that this scheme did not go far enough in eradicating an activity which a substantial majority of people in this country believe to be cruel and unecessary.

The Hunting Act 2004 bans all hunting with dogs with the exception of a small number of tightly drawn exemptions designed to allow certain important pest control and other activities to take place. These exemptions, including the one allowing the use of up to two dogs to rescue an injured wild mammal, were themselves considered carefully by MPs who decided where the number of dogs allowed under these exemptions should be strictly limited. In the case of the rescue exemption, the House of Commons considered that there was no justification for numerous dogs to be used to follow the scent of single animal and decided that the limit in this case should be two dogs. This is fully in line with the findings of the Burns Inquiry (paragraphs 5.58 and 6.38) and is intended to ensure that essential rescue work can be carried out without providing an opportunity for those who wish to hunt unlawfully to hide behind an act of mercy to do so.

I appreciate that the Act may require some people to change the way they have previously done things, and places an onus on those who shoot wild mammals to take great care

when they are shooting. However, I have no reason to believe that the standard of marksmanship in this country is in decline and there is plenty of good guidance, produced by reputable organisations such as BASC, to assist them in carrying out this task to the highest standard.

Finally, I have to say that your assertion that there is an anomaly in the Hunting Act in relation to the recovery of shot hares makes no sense whatsoever. The Act is perfectly clear: a hare that has been shot can be retrieved by a dog, which is normal practice for shooting, while any mammal that has been injured can be rescued by a person using up to two dogs.



J B H Jackson
Summit House
12 Red Lion Square
LONDON WC1R 4QD

Tel: 020 7831 5775
Fax: 020 7831 5779
Email: john.jackson@mishcon.co.uk

FAX NO: 020 7930 9572 (Total Pages: 1)

8th March 2005

Jonathan Powell Esq
The Prime Minister's Chief of Staff
10 Downing Street
LONDON
SW1A 2AA

Dear Jonathan,

Re: CA Press Release

I thought you should see the enclosed press release. It relates to an extremely nasty incident last week.

John Jackson

Encl.

COUNTRYSIDE ALLIANCE

News Release

Press Office
Tel: 0207 840 9220
Fax: 0207 793 8899
Email: info@countryside-alliance.org
Web: www.countryside-alliance.org

Release: Immediate
Date: 4th March 2005

Hunt Saboteurs continue acts of violence despite "Hunting Ban"

Hunt staff carrying out legal hunting activities were yesterday brutally beaten by balaclava-clad anti-hunt protesters who had trespassed onto private property.

Followers of the Vine and Craven Hunt were dragged from their horses and brutally attacked during the attack near Marlborough. Hunt Master, Daemon Edwards, sustained several broken ribs when he and his horse were pulled to the ground, and Whipper-in Duncan Cinnamond was pulled from his horse and hit on the back of the head with a piece of timber.

Huntsman, Tim Staines, 26, said: "No foxes have been killed by the Vine and Craven since the ban came into force, so I can only assume that the saboteurs just wanted a fight. This has nothing to do with animal welfare – you hear about hooligans beating up football fans and we've had the same sort of terrorism here in the middle of the countryside."

Commenting on this violent attack Delly Everard, Wessex Regional Director at the Countryside Alliance, said "What happened yesterday beggars belief. The thugs involved in this incident are people haters, they have shown total disregard for the law as well as animal and human welfare, while hunt supporters are obeying the law and are now hunting a trail.

"By passing discriminatory and divisive legislation, the Prime Minister and the Government have sent a clear message that it is acceptable to display prejudice towards the rural community. The ban on hunting has now caused even more problems for the countryside and the already overstretched police."

Ends...

For more Information contact the Press Office on 020 7840 9220
or Delly Everard on 01672 871819

[redacted] Lovesey

From: Kate Gross
Sent: 04 March 2005 13:51
To: Matrix Filing
Subject: FW: Post of Deer Initiative Chairman - Efficient Casualty Services for the Deer , Fox and Hare.

hunting file

-----Original Message-----
From: Edmund Marriage [mailto:Patrickfound@btopenworld.com]
Sent: 04 March 2005 12:52
To: ian.lamb@forestry.gsi.gov.uk
Cc: Rod Leslie; Sandy Greig; Charles Critchley; Ian Shaw; Geoff Hatfield; Tom Bruce Jones; John Swift; Christopher Graffius; Simon Clarke; Stewart Scull; Mark Nicolson; Jonathan Silk; Barney Holbeche; Mark Hudson; Judith Webb; Lewis Thomas; Twink Allen; David Denny; Simon Hart; Hugh Thomas; Nigel Stone; John Edwards; Stephen Pugsley; Ashley Matthews; Alun Michael; Margaret Becket; Lord Whitty; Kate Gross; Guy Adams; John Lucas
Subject: Post of Deer Initiative Chairman - Efficient Casualty Services for the Deer , Fox and Hare.

Dear Ian Lamb,

Many thanks for this information.

I should declare an interest, in that I am making a formal complaint to the Association of Chief Police Officers, and to the Parliamentary Ombudsman through my MP, of the deceit and fraudulent activity of organisations and individuals, who have deliberately covered up, or lied about, the serious issue of wounding, in relation to the shooting of the deer, fox and hare, with either rifle or shotgun.

Within Government Consultations, and during the progress of the Hunting Bill, this deceit and fraudulent activity was further compounded by false and fabricated video evidence, purporting to be evidence of scent hounds attacking deer. This matter was not addressed by Alun Michael, despite formal requests to do so.

These matters will become important national issues on a change of Government, as will the completion of the incomplete Contract 7 of the Burns Inquiry.

More than enough research is available on this subject, to question any shooting of the deer, fox or hare, without a suitable and efficient casualty service, based on scent hounds.

You will appreciate that the Hunting Act two scent hound limit, for following up deer and fox, which does not apply in following up of wounded and casualty hares, has already created serious welfare problems within deer management, and on Forestry Commission managed land, where fox control is now impossible.

I am in contact with Ian Shaw and John Swift on this subject.

Please would you forward this e-mail to Paul Hill-Tout, in order to refer him to my unresolved correspondence with Ian Shaw, and to establish clear and helpful FC policy on this crucial subject.

The Forestry Commission must now address the wounding and casualty issues, bearing in mind the widely accepted best practice Code of Conduct requirement, not to shoot at the deer, fox and hare, without and effective means of following up wounded, and more important ensuring the provision for the searching for casualty animals.

You will see that I am currently raising this issue at the highest level, precisely because the

Hunting Act is promoting cruelty and preventing kindness.

It is quite clear that **DEFRA have been misled** by both BASC and the Forestry Commission on these problem issues.

When I asked Elliot Morley, at the Deer Initiative Conference at Buxton, and at the PAWS Seminar last year about wounding and casualties, he claimed that this issue did not exist, because BASC had told him, that it did not exist.

I do not think he is naïve enough to believe such nonsense.

The significant increase in suffering of our wild red deer on the Quantocks, as a direct result of the Forestry Commission/Morley deer hunting ban, is already well document by my research and letters already on your Forest Enterprise files.

Please will you facilitate the formal resolution of this key welfare issue amongst Forestry Commission Advisors and Management as soon as possible.

Kind regards,

Edmund Marriage - British Wildlife Management.

-----Original Message-----
From: **ian.lamb@forestry.gsi.gov.uk [mailto:ian.lamb@forestry.gsi.gov.uk]**
Sent: Friday, March 04, 2005 11:24 AM
To: Patrickfound@btopenworld.com
Subject: RE: Post of Deer Initiative Chairman

Dear Mr Marriage,

Thank you for your e-mail, the contents if which are noted.

PREM 49/4339/1

EMAIL DATED 04/03/2005

PREM 49/4339/1

EMAIL DATED 04/03/2005

Wendy Abbs

From: Kate Gross
Sent: 04 March 2005 12:15
To: Duty Clerks
Subject: FW: Hunting Act: Letter to Judicial Office

hunting file
-----Original Message-----
From: David Mackie [mailto:DMackie@treasury-solicitor.gsi.gov.uk]
Sent: 04 March 2005 11:57
To: lewis@11kbw.com; sales@11kbw.com; Alec.Brown@DCA.GSI.GOV.UK; sarah.townsend@DEFRA.gov.uk; linda.dann@DEFRA.gsi.gov.uk; Nicholas.Robson@DEFRA.gsi.gov.uk; alex.horton@lslo.x.gsi.gov.uk; rebecca.hilsenrath@lslo.x.gsi.gov.uk; VAUXJ@parliament.uk; Adam Chapman; Rebecca Lane
Cc: Kate Gross
Subject: Hunting Act: Letter to Judicial Office

Please see attached, which has now been sent.

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

DX 123242 St James's Park. Switchboard 020 7210 3000 (GTN 210).

Direct Line: 020 7210 2948 Direct Fax: 020 7210 3410 E-mail: dmackie@treasury-solicitor.gsi.gov.uk

Please quote: DMM/D1

Your reference:

Date: 4 March 2005

The Judicial Office
House of Lords
London SW1A 0PW

By Hand

Dear Sirs

Jackson and Others v HM Attorney General

We refer to the Petition for Leave to Appeal of Mr Jackson and his co-petitioners, that has now been referred to an Appeal Committee.

We would be grateful if the attention of the Appeal Committee could be drawn to the fact that the Attorney General supported the unsuccessful application for leave to appeal that was made to the Court of Appeal, and that he supports the present Petition for Leave to Appeal for the same reasons as were given by counsel on his behalf to the Court of Appeal.

Thus, while the Attorney General considers that the Parliament Act 1949, and therefore the Hunting Act 2004, are valid, he considers that there is a strong public interest in granting leave in the unique circumstances of this case, for the following reasons. Firstly, as the Court of Appeal themselves recognized, this is no ordinary public law case. Secondly, the Court of Appeal judgment deals not just with the question of the validity of the 1949 Act, but also with the fundamental question of the extent of the powers of the Monarch and Commons alone to make constitutional changes and, in the view of the Attorney, the law in this respect has been left in a state of some uncertainty as to the precise breadth of the 1911 Act. Thirdly, the Court of Appeal disagreed with certain of the views expressed on the latter subject by the Divisional Court below.

The Attorney General supports the reasoning of the Divisional Court, and given the importance of the issues and the divergence of views between the Court of Appeal and the Divisional Court, it would be very desirable for the matter to be considered by the House of Lords, particularly as the House of Lords has not previously had the opportunity to deal with the issues in question.

Yours faithfully

David Mackie
for the Treasury Solicitor

cc Allen and Overy (Fao A. Clark Esq.); Collyer Bristow (Fao S. Heffer Esq.).

Tel: 020 7831 5775
Fax: 020 7831 5779
Email: john.jackson@mishcon.co.uk

J B H Jackson
Summit House
12 Red Lion Square
LONDON WC1R 4QD

FAX NO: 020 7930 9572 (Total Pages: 2)

2nd March 2005

Sally
cc Pat
David H
Italy S
So this alright Tom!

Jonathan Powell Esq
The Prime Minister's Chief of Staff
10 Downing Street
LONDON
SW1A 2AA

Dear Jonathan,

The enclosed press release from the Countryside Alliance may interest you.

Yours sincerely,

John Jackson

Enc.

COUNTRYSIDE ALLIANCE

News Release

Press Office
Tel: 0207 840 9220
Fax: 0207 793 8899
Email: info@countryside-alliance.org
Web: www.countryside-alliance.org

Release: Immediate
Date: 2nd March 2005

156 hunts kill 157 foxes in second week of Hunting Act

156 hunts registered with the Masters of Foxhounds Association* met on 206 occasions and killed 157 foxes in the week ending 26th February.

Frosty conditions in the East of England have reduced hunting activity, but hunts across the country reported continued strong local support. Less than 20% hunts were accompanied at any time by anti-hunt saboteurs or 'monitors'. Of the 157 foxes accounted for 37 were killed unintentionally.

Simon Hart, Chief Executive of the Countryside Alliance, said: "Hunts are adapting to the new legislation with an absolute determination to maintain their structures and continue to provide a fox management service until the Hunting Act is repealed.

"New legal hunting practices are being developed as the law is tested and explored. The period since 18th February has provided a testing ground for hunts. The end of the season for most forms of hunting is imminent. Experience and best practice will be shared throughout the summer so that hunts are well prepared for the start of the new season next Autumn".

Ends...

For more information contact the Press Office on 020 7840 9220 or 07775 938792

Notes –

*Reports from unregistered packs and hunts registered with the Federation of Welsh Packs are not available.

10 DOWNING STREET
LONDON SW1A 2AA

FAXED

From the Prime Minister's Chief of Staff

2 March 2005

Dear John,

Thank you for your letters of 25 February and 2 March.

I understand that the Attorney General's office is writing to the Judicial Office of the House of Lords to support your petition, given the constitutional importance of the points raised by the Court of Appeal's judgement.

If the House of Lords agree to hear your appeal, the Attorney will then consider whether to support an application for an expedited hearing.

Yours ever

JONATHAN POWELL

Mr John Jackson

From: Kate Gross
Sent: 02 March 2005 15:14
To: Duty Clerks
Subject: FW: WOUNDING RATES - HORSES ACCOMPANYING HOUNDS ON FORESTRY COMMISSION MANAGED PROPERTY'S

file pls

-----Original Message-----
From: Edmund Marriage [mailto:Patrickfound@btopenworld.com]
Sent: 02 March 2005 15:07
To: Peter Davies; Liz Phillips; Simon Hart; Darren Hughes; John Thorley; Rhian Nowell-Phillips; Mark Hudson; Julian Salmon; Tim Bennett; Barney Holbeche; Kate Gross; Alun Michael; Ben Bradshaw; Tristan Crago; Margaret Becket; Lord Whitty; James Paice; Peter Luff; James Gray; Tim Yeo; Martin Howat; Nick Fox; Lembit Opic
Subject: WOUNDING RATES - HORSES ACCOMPANYING HOUNDS ON FORESTRY COMMISSION MANAGED PROPERTY'S

COPY FOR INFORMATION

-----Original Message-----
From: Edmund Marriage [mailto:Patrickfound@btopenworld.com]
Sent: Wednesday, March 02, 2005 1:34 PM
To: ian.shaw@forestry.gsi.gov.uk
Cc: John Swift; Christopher Graffius; Simon Clarke; Stewart Scull; David Kenyon
Subject: WOUNDING RATES - HORSES ACCOMPANYING HOUNDS ON FORESTRY COMMISSION MANAGED PROPERTY'S

Dear Ian Shaw,

Please would you explain where in the hunting bill, a horse or horses accompanying two hounds are prohibited.
Currently your responses fail to address the legal issues of harbouring vermin, and therefore in a court of law your failure to disclose or discuss remedies for this problem, exhibit a failure in your duty of care to deal with these obvious problems before they happen. This will not help your case when you are brought to court to pay compensation to damaged parties.
Current inactivity will cost the taxpayer more money in the long run.
The Codes of Good Conduct to which you appear to refer, make it quite clear that no shooting of the fox should be undertaken without an effective means of following up a wounded fox.
BASC's own wounding research suggests 16% wounding when stationary targets are used, and other issues such as ammunition and range are taken into consideration. Shots at a moving target in difficult terrain will lead to higher rate of wounding
Peer reviewed research suggests that Mr Average Shotgun Shot wounds more than 50% of the foxes he shoots at.
The central issue, which you have not addressed, of being limited to using only two scent hounds, creates the conditions under which it is virtually impossible to drive foxes to a line of guns, or single typed lurchers, in order that the foxes are given the best prospects of an instantaneous death.
You might like to ask John Swift to explain to the Prime Minister, DEFRA, me and to you, how BASC members can address such issues in a Code of Conduct, when they do not have the means at their disposal for both following up wounded foxes, or for searching for the inevitable casualty animals, encountered when controlling fox numbers.
I cannot believe you are so naïve to believe an organisation, which represents such a small percentage of those who use shotguns on your managed property's.
I look forward to your reply.
Kind regards,

Edmund Marriage - British Wildlife Management.

-----Original Message-----
From: ian.shaw@forestry.gsi.gov.uk [mailto:ian.shaw@forestry.gsi.gov.uk]
Sent: Monday, February 28, 2005 4:35 PM
To: Patrickfound@btopenworld.com; ian.shaw@forestry.gsi.gov.uk
Cc: John.swift@basc.org.uk
Subject: RE: Horses Accompanying Hounds on Forestry Commission Managed Pro pery

Dear Mr Marriage
Thank you for your e-mail.
In regards to your question concerning a rider or riders on horseback accompanying hounds I can say that the only time that such an activity would be permitted by the Forestry Commission would be in connection with a approved Drag Hunting activity.

In response to your points about the two hound limit I can only respond, as I have before, and say that the FC will licence 'exempt hunting' in circumstances as covered by Section 2(1) and Schedule 1 of the Hunting Act 2004. It would be expected that those responsible for dispatching a flushed out fox would comply with all appropriate Codes of Conduct required in such circumstances.

Yours sincerely
IAN H G SHAW
Swyddog Tir Gwlad / Country Land Agent
Comisiwn Coedwigaeth Cymru / Forestry Commission Wales
* Ffôn/Tel:01970 612367 (switsfwrdd)
01970 626712 ext5000 (Llinell uniongyrchol/Direct dial)
07774 764587 (Ffôn symudol / Mobile)
* Ffacs/Fax: 01970 625282
* E-bost/E-mail: ian.shaw@forestry.gsi.gov.uk
<mailto:ian.shaw@forestry.gsi.gov.uk>
* Victoria House, Victoria Terrace, Aberystwyth, SY23 2DQ

-----Original Message-----
From: Edmund Marriage [mailto:Patrickfound@btopenworld.com]
Sent: 25 February 2005 21:42
To: Ian Shaw
Cc: John Swift
Subject: Horses Accompanying Hounds on Forestry Commission Managed Propery

Dear Ian Shaw,
Please could you let me have a clear statement regarding horse, or horses, accompanying hounds on Forestry Commission properties, and a high level response please, to my complaints regarding the nonsense of the two hound limit, and subsequent poor welfare for foxes, and the difficulty in presenting foxes, in order that they may be shot at BASC Code of Conduct required range.

Kind regards,

Edmund Marriage - British Wildlife Management.

8

Karen Lovesey

From: Kate Gross
Sent: 28 February 2005 11:33
To: Matrix Filing
Subject: FW: Red Deer Welfare Equation

for hunting file pls

-----Original Message-----
From: Edmund Marriage [mailto:Patrickfound@btopenworld.com]
Sent: 25 February 2005 13:23
To: Kate Gross
Subject: Red Deer Welfare Equation


Red Deer Welfare Equation - FI...


WELFARE ATION LEAFLET - S


Labours Hunting Act - PR - 10t...

BRITISH WILDLIFE MANAGEMENT

Red Deer Welfare Equation

Comparing suffering between hunting and stalking methods - *The extent of the poor welfare can be multiplied by duration of poor welfare as an estimate of the severity of the problem* - Broom and Johnson 1993 Stress and Animal Welfare London:Chapman & Hall

A. HUNTING - 100 deer moved by soft temperament scent hounds, and culled when at bay by a close range head shot, to give the best prospect of a selective instantaneous death.

Moving the deer involves low degree recoverable fatigue, described by some as recoverable stress or suffering (the alleged damage has not been defined or proved). Welfare is compromised only during the final stages of the hunt - Burns Inquiry Qualifications. **Duration** on a worst assessment of an average of 15 minutes before dispatch. (The Joint University Study concluded that it may be no more than 10 minutes, recently confirmed by further unpublished research) - Deer choose where to go, what to do, and when to stop. Over their lives, before they are selected for culling, they become familiar with hounds, and will suffer no more than recoverable fatigue or stress - Mentally and physically they are not damaged.

100 units x duration 1/4 hr = 25 hours of compromise of welfare - fatigue or stress.

There are ethical bonus's of an instantaneous death, a sporting chance and a clean quality carcass. We claim that such low degree recoverable fatigue or stress is necessary, in order to avoid the inevitable unnecessary suffering in rifle shooting, and to allow the curtailment of all degrees of natural and casualty suffering by the good selective management of hunting methods. Up to 50% of deer are selected by the local harbourer/deer manager because they are already suffering from sickness, casualty or genetic problems. The hunt's key role is to reduce this suffering. (Bateson, JU Study, ISHA & BWM). Others are harvested at maturity. Hounds ensure selectivity not achieved in rifle shooting. With wild red deer in the difficult terrain in the West Country, hounds are at least 5 x more efficient in following up specific casualties, than a single or pair of mute scent or blood trailing hounds. In practice, such suitable stalkers dogs with skilled handlers and access rights, rarely exist. In work scent hounds assist in the much wider range of essential roles of inspecting, dispersing, locating, and quickly bringing to bay a distressed animal. Action taken to remove or restrict hound use leads to an increase in all suffering, and in consequence causes unnecessary suffering.

B. STALKING - 100 deer body shot by rifle. Head or neck shots are not recommended. Human error leading to loss of wounded deer (5% Bateson Report - 15% BWM) - Two shots needed (11% Bateson Report) - No instantaneous death (70% JU Study - Thomas & Allen) -. *Our wounding figures were only optimistic in as much as they represented a best case scenario* – Bradshaw and Bateson in *Animal Welfare*.

100 x min of 5% best case, minimum lost wounded = 5 units of high degree non-recoverable suffering for the duration of 50 hrs = 250 hrs of suffering. (see overleaf)

Simple Solution - Hunting is more humane than stalking by a factor of at least **10** (**25 hrs v 250 hrs**) on culling comparisons, before the figures are weighted for the duration of all suffering curtailed by hunting methods, such the casualty services, and the communal control of the management activities, through Deer Management Group support and cooperation The following important factors are not included above. Degree of suffering, ethics of instantaneous death, importance of selectivity, realistic average wounding rates, ethics of sporting chance and clean carcasses, length of time all body shot deer take to die, and of the welfare cost of stalking, as a proven noxious stimulant on deer welfare (Batchelor 1993).

An outline description of the wider West Country Red Deer *welfare equation* based on the submission by British Wildlife Management to the National Trust Council in October 1997.

The *highest annual estimate* for deer shot (many officially through the hunt supporting land custodians, many poached without permission) in the wider area covered by the three packs of West Country Deer Hounds is 900. The number of road, shooting and other management casualties are reliably estimated at a *minimum* of 140 animals, of which 78 were accounted for by the hunts during the last year. The casualties dealt with by the hunt are nearly always reported by third parties who happen to see a suffering animal. Sometimes such incidents will be reported during foxhunting or whilst hounds are being worked through the countryside. Sometimes injured deer will still be able to run many miles. As injured or sick deer tend to seek thick cover in which to hide, only a proportion of casualties will be reported or found.

In order that they can be found, sometimes many miles from the kennels, the experienced hunt staff often mounted, with access rights and excellent local knowledge, will take the most experienced hounds, trained to find and follow the scent of that specific species. They will then have to draw, search, locate, follow, hunt and dispatch a potentially dangerous and distressed wild animal. In some cases they will spend all day looking for a casualty. This is an efficient free 24 hour, all year, all conditions service, using highly skilled and experienced staff, extensive back up facilities and *is therefore not replaceable as suggested.* The hunt staff estimate that the *minimum* average length of time that such casualty victims have suffered is four days. We therefore have multiplied this lowest estimate of 140 casualties by 96 hours (4 days) to give a figure of 13,440 hours.

We believe that the mathematical model should show that each of the 130 deer culled by the hunts (Bateson Report annual average) on the most pessimistic analysis, might suffer at the high or the alleged *unacceptable levels* for *no more* than half an hour. No evidence has been produced to show that deer are not well adapted to exercise and do not recover quickly from such exercise. This side of the equation therefore would now clearly show *necessary (recoverable) suffering* of *no more* than 65 hours to achieve instantaneous death, the avoidance of wounding, a clean carcass, a sporting chance, the provision of a recreational resource and most important of all the provision of the means of following up, *to curtail the predominantly unnecessary (non-recoverable) suffering of the real victims,* which we calculated to show physical suffering at unacceptable levels for a *minimum* of 13,440 hrs.

Our figures relate to individuals and do not take into account the additional positive hunt factors, including the reduction of natural suffering, which ensure the survival, good health and low stress levels in the red deer herds. Deer hunting adds £9.5 million to the rural economy each year, placing a value on each hunt culled deer of some £60,000. A quality stalked stag may have a value of £3.500 to a trophy hunting stalker.

N.B. Please take note of the difference between the *fully recoverable* 'alleged' suffering from exercise during the 'average walking pace' hunt and the real *non-recoverable* physical injury or health problem suffered to create the actual casualty figures - Census research suggests that 2,000 hinds give birth each year in the wider area. Allowing for an unacceptably high first year natural mortality of 20%, this still leaves 430 deer unaccounted for, *raising serious welfare concerns* and confirming the crucial need for all management and shooting to be conducted through one competent organisation based on the existing proven local harbourer/manager system. These figures emphasise the need for close observation, inspection, and the 'unique' deer hunt casualty services.

E-mail: patrickfound@btopenworld.com Telephone: 01935 816944
http://www.foxhunters.net/bwm

BRITISH WILDLIFE MANAGEMENT - PRESS RELEASE – 10/2/2005

BRITISH PEOPLE - PULLING TOGETHER - TO MOVE THE WORLD

The Hunting Act will promote cruelty and prevent kindness.

The implementation of the Hunting Act will *promote cruelty* and *prevent kindness* to the deer, fox, and hare, which is not what the Government intended. The RSPCA supported hunting for 150 years until 1978, because they considered shooting a less humane alternative. No reasoned argument backed by research has been presented to justify this change of policy.

In The Daily Telegraph on Thursday 18th November 2004, Tony Blair, speaking earlier at a press conference with the President at Lancaster House, insisted *he had not wanted a total ban.* The focus would now turn to arguments over the legality of the ban, he said:

For many people in the country, they would like to have seen a situation in which we dealt with the arguments as to cruelty, whilst at the same time understanding the feelings of those who regard this as integral to their way of life.

British Wildlife Management has presented successive Ministers, Lord Burns, and the Charity Commissioners, with a detailed scientific and common sense account on *the arguments as to cruelty,* within comparative assessments of suffering between hunting and shooting methods. This demonstrates that both activities are essential and complementary, and that they should never have been promoted independently, or considered distinctly separate, within wildlife welfare and management best practices.

The animal welfare science proves that hunting methods are more humane than shooting by a factor of at least 10 on culling comparisons, and by at least 100, when all the species management factors are properly considered. Recent quality research on deer and fox wounding, and suffering in hunting, totally supports this conclusion.

Professor Patrick Bateson for the National Trust, and Lord Burns within Contract 7 of his Inquiry, sought the resolution of the issue of comparative suffering between hunting and shooting. Efforts to establish the truth and complete the *incomplete* Contract 7, were overturned by deceit, misinformation, and the diplomatic immunity given to the shooting lobby by the Government. This ensured that the issue of comparative suffering did not stop the political decision to ban hunting.

In consequence, the Commons majority and animal rights interests stand accused of making false accusations against a rural minority, on which many of them raise large sums of money from the public by deceit. A fraudulent activity. There are many serious linked problems, which have not been properly addressed during the Governments consultations, because Labour have avoided evidence based decisions, which were in conflict with the beliefs and emotions of their backbenchers, brainwashed by these animal rights interests.

In our upland areas, efficient fox control using foxhounds, terriers and shotguns will stop, with devastating impacts on ground nesting birds. Lamb losses maintained by hunting at around 2%, will spiral to uneconomic levels destroying livelihoods and upland management skills. This will result in massive compensation claims against the Forestry Commission, funded by the taxpayer, and other organisations, for harbouring vermin, prohibited under the law.

Deer management in the South West represents to finest example of species management on the planet, with three packs of red deer scent hounds contributing £9.5 million to the rural economy each year. The future of the herds will now be beyond the control of the rural communities, 820 land custodians, and their very successful Deer Management Groups. A commercial free for all, dominated by un-regulatable stalkers, with no track record in managing deer, will ensure that deer suffering increases, and deer numbers decline significantly.

It is crucial to realize that Labour's Elliot Morley, John Rolls of the RSPCA, and others, in promoting **wildlife protection policies**, have put in place a classic Stalinist divide and rule strategy: *1. Isolate the small number of reviled hunters. 2. Placate the shooters, especially if they help get rid of the hunters. 3. When hunting has gone, then take on the shooters, as they will then be more vulnerable and have more to answer for.* Wounding deals – *not to raise the issue of wounding in any argument for hunting or against shooting* - have been put in place for different reasons, on all sides of the debate. The truth and the best interests of our precious wildlife have disappeared into a catalogue of deceit.

Douglas Batchelor, LACS and Chairman of the Campaign for the Protection of Hunted Animals wrote to me saying: *I am sure you will agree that people who hunt and shoot mostly because they enjoy it. Our case is quite simply that they should not enjoy it. In much the same way as while paedophiles may feel that they enjoy abusing children and therefore justified, a civilised society condemns their pleasures and regards them as socially unacceptable in what is now a more civilised society. No amount of argument that it is "well done" addresses the point that it should not be done at all.* Through mismanagement and neglect at the LACS Dulverton red deer sanctuary, some 80% of the deer in the area have endemic TB, requiring a massive cull to remove the reservoir of infection. We are told the next worst world case is 20%

The starting point in this debate should be the realisation that the good management of the populations of foxes, hares and deer, prevent individual species from achieving pest status or spreading disease. Bad management, or *the neglect of protection*, leads to the highest levels of suffering. In reality, we have an equal duty of care to domesticated and to our wild animals.

Government should accept, and not ignore the fact, that the scent hound, in locating the specific quarry, conducts a long search phase, which is of little consequence to the wild animal, and a *very short pursuit phase*. This procedure provides the best prospect of an instantaneous death, the least disturbance to the animals natural environment, and the ability to cull animals out of site of other animals; primary internationally agreed welfare requirements.

There are two choices - a. The well regulated selective management and culling of the fox, hare and deer species, making full use of the available skills and utilizing scent hounds, sight hounds and terriers - b. The un-regulatable harassment and indiscriminate slaughter of foxes, hares and deer by rifle and shotgun, without the full assistance of the well supervised scent hounds or terriers to follow up wounded and find casualties.

The over-riding principle of the unwritten British Constitution is in achieving a balance between the power of the Crown, the Commons and the Lords. The 1911 Act brought in by Liberal Asquith, broke this triumvirate constitutional principle, by giving sufficient powers to the Commons to abolish the Lords, if they so wished. Labour's undemocratic abuse of power, in removing many constitutional checks and balances, including evidence based, reasoned debate, coupled with the use of the second 1949 Parliament Act to bring in a hunting ban, will justify more than civil disobedience, if the Hunting Act is enforced.

It now crucial that the enactment of the Hunting Act is delayed, an issue the Government supports, and that an official inquiry be held, in order to unscramble the corruption involved and establish the truth. These three Acts should be repealed, and good government restored.

Edmund Marriage - British Wildlife Management.

E-mail: patrickfound@btopenworld.com Telephone: 01935 816944
http://www.foxhunters.net/bwm

file

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FAX NO: 020 7930 9572 (Total Pages: 1)

25th[t] February 2005

Jonathan Powell Esq
The Prime Minister's Chief of Staff
10 Downing Street
LONDON
SW1A 2AA

Note from Conservative
JP
25/2

PCO
Huntingdale pls.
JP to reply to CA
Ken 28/2

Do you think the Attorney General would be prepared to join with us in writing to Lord Bingham, the Senior Law Lord, inviting their Lordships to consider our petition expeditiously given the great importance of the result to many thousands of people?

John Jackson

Karen Lovesey

From:	Kate Gross
Sent:	21 February 2005 19:04
To:	Debbie Ailes; Matrix Filing
Cc:	Martin Hurst; Vicki Bakhshi; Jonathan Powell; Jan Taylor; Katie Kay
Subject:	Hunting - British Wildlife Management
Importance:	Low

I spoke earlier to Mr. Edmund Marriage, who has written to the Prime Minister requesting a meeting, and also sought to speak to Jonathan/Martin about his concerns. This email records our conversation.

His key point is that advice provided by British Wildlife Management, to the effect that shooting was crueller in animal welfare terms than hunting, had not been taken into account in the Burns process. He said that initial evidence from this weekend had shown that allowing only 2 dogs to pursue a wounded animal was insufficient and led to greater cruelty than hunting 'normally'. He wants to see the Hunting act overturned on the basis of this evidence and a licensing scheme introduced.

I apologised for the delay in responding to Mr. Marriage's letter requesting a meeting. I said that due to diary pressures the PM would be unable to meet him. I said that he should continue to correspond with DEFRA who would be able to offer him detailed responses to the points he made, as they led on hunting. I said that I would be happy to reflect on his concerns in my advice on the issue and he undertook to send me more material.

I have amended Katie's draft response declining a meeting accordingly.

Kate

D Hunting

[redacted]te Gross

From: Michael, Alun (Personal) (Secretariat) [alunmichaelpersonal@defra.gsi.gov.uk]
Sent: 18 February 2005 02:38
To: Jonathan Powell
Cc: Kate Gross; David Hill
Subject: Personal : Note about hunting

Jonathan .....

I promised to let you have a note about the current situation, together with the "lines to take" that I think are working well at present (despite the Media obsession with the hunting issue) and a couple of concerns about risks in the next few weeks. Sorry it's rather late but I'm catching up after a long and active constituency day.

I could go on at great length, but I shall try to focus on what I know to be your (and the PM's) concerns and on current handling issues.

- The first point is that we have firmly established the Government's position as facilitator - "enabling Parliament to reach a conclusion on the issue" - rather than being obsessed with the issue or seing it as our policy priority.
- The second point is that the Prime Minister's position is clearly seen as unenthusiastic about a ban as such and having supported my "compromise".
- The third follows - that this is a "House of Commons issue" rather than a Government policy issue.
- Fourthly, this is no longer a political matter. Enforcement is for the police, who have made clear that they will take a firm but balanced approach. It's clear what you can and cannot do to stay within the law and law-abiding people will respect the law.

I think it's important for me to continue to repeat the "mantra" on these points as journalists by and large ignore our position and nbody is going to say it for us !

While the Countryside Alliance continues to try to draw the PM into the argument, we have resisted such attempts by pointing out that **he** has been consistent and it is others who have failed to support attempts to find a less divisive way forward. I have consistently said that **both** sides were unwilling to compromise, although frankly the Alliance has been quite outrageous in refusing to tell its own membership about the time and effort that was put into working with them and listening to their case. I warned John Jackson two years ago that it would rebound on him if he failed to tell his members about the meetings in which we were exploring compromise, and also that his words about the countryside "erupting with fury" were not only foolish but appeared to condone if not encourage violence. In the event the Alliance was not willing to brook the slightest compromise and have got themselves into a real mess.

At this stage, the anti-hunt voices are being reasonable and restrained. It has been helpful this week that the Waterloo Cup gave a focus on hare coursing - which is the most indefensible activity that is banned - and the unwillingness of the Alliance to even allow a ban on coursing points up the extent to which they have been intransigent. On the other hand, we have also been balanced on the enforcement issue - pointing out that the Government has been very strong on animal rights protesters and that even bodies like the RSPCA who feel strongly about enforcement of the hunting ban do not expect it to take as

hi[redacted] a priority as burglary or car crime.

At this point it is very important to note that the issue of hunting is just as divisive in rural areas - more rural voters are opposed to hunting than in favour - and we are not getting any sort of backlash from the wider rural community.

- On Tuesday I attended an event with the British Horse Society at which hunting was not even mentioned
- Shortly we publish the first ever Plan for the Future of the Horse Industry - drawn up jointly with the industry - which has massive support in the equine world
- I was on the Ridgeway with Robert Jackson and others on Wednesday - on the day of the Appeal Court decision - and it wasn't an issue
- Leaders of the NFU and the CLA have told me that they want the issue over and out of the way - they are much less opposed to a ban than their public comments and in private they want us to get on with it
- It follows that most farmers want certainty, and the very odd tactics of the Alliance seem calculated to increase uncertainty by pretending that the Act isn't clear. It is perfectly clear what is legal and what is not.
- Hunters do not command support in rural communities and have had to re-think their approach since their protests were not commanding support.

The PM's injunction to me when he gave me this job was to "make the countryside love us". While that's a pretty tall order, we certainly now have the significant leadership groups in rural England - other than the minority who hunt and even including some of them - acknowledging that this Government has done more to engage with the whole range of issues that concern rural people than any previous Government. Most rural people want to talk about schools and health and jobs and transport. Walking, riding and access to the countryside generally are now seen as a vital contributors to the rural economy. If they have a view on hunting they want certainty and for the debate to be over.

Two killer facts .....

- **Satisfaction with services is now higher in rural areas than in urban areas**
- **Unemployment since 1997 down 24% in urban but down 26% in rural !**

I also think it would be a real mistake now to say or do anything that hints of weakness - many Labour MPs have experienced physical violence from hunt supporters and stood out against intimidation of various sorts and have told me that they are hurt and annoyed when newspaper stories suggest that there is sympathy for hunters at No 10. The behaviour which Ben Bradshaw and I experienced on different occasions in Exeter was outrageous, also the events in Cardiff on Alan Milburn, on Geoff Hoon and so on. But these efforts have failed so far, and indeed have weakened support for hunting - which is why most hunters have rejected such an approach and while there are still incidents they are fewer than a few weeks ago.

It is therefore important not to look as if the Government is "running scared" of such intimidation as **it would encourage more such attacks**. Four years of this have given me a considerable insight into the mentality of their less pleasant supporters "in the field" and there are some really unpleasant bullies amongst them. There **are** pleasant reasonable people who hunt but there is also a nasty element. The effect of these activities has been to lose them support which is what worries the Conservatives.

When I last heard the PM questioned, he reminded the questioner that he had supported

m[redacted]"compromise", that pro-hunters had neither supported my compromise nor the delay u[redacted] 2006 which we offered and which Labour MPs voted for (I regard that vote as a rare minor triumph) and essentially said "you have made your bed ..." which is true. The tone and content were absolutely perfect. As everyone knows it is now out of his hands it would be a mistake to appear to take it back. (To put it another way, leave it to me, I'm dispensable!)

I do think we are in danger of the "spin" from the Alliance at present. Terry Burns told me he thought a ban on hunting was inevitable and what we should seek is to provide people with time to adjust. We've done that pretty well, but the Alliance has delayed the process by telling its members that the ban "won't happen" .... Though many of them are very quietly acting on the increasing likelihood of an effective ban. Many hunts are actually looking into drag hunting and other options, and the more they go down such roads, the more they can "hunt within the law" and the problem diminishes. The "spin" that the Act is unenforceable is nonsense, but if people believe it they may be involved in a more drawn-out period of delay.

At the end of Any Questions last week, after we went off air, a pro-hunter asked if the police were there to protect me - we had a hail of eggs etc on the way in - and I said that "If some people were behaving themselves we wouldn't need to waste so much police time" and it got the loudest applause of the evening. The line I have used, that ..... "the Act is now on the stature book and has been unheld on appeal - it's now time for law-abiding people to abide by the law rather than offering a challenge to the police" has had a positive response even from some hunting people.

The danger now is the "empty chair" which allows ill-informed attacks on the Government without correction or reply, although I entirely accept that it is best for us to, in effect, let the hunts have this weekend and return calmly to the debate next week on a lower-key tone. With that in mind I have turned down all requests for this week and simply given a statement where necessary to respond to specific points. I have also turned down bids for Saturday and Sunday with the exception of Countryfile which had been accepted three weeks ago - I think it would cause more problems to withdraw now than to follow through and in any event Frost will have set the day's tone by then. I will call Alan Johnson tomorrow.

The most dramatic change of recent weeks has been the withdrawal of the hunters' threat to shoot tens of thousands of dogs. The Countryside Alliance's new "Hunting Handbook" takes a long time to tell people that they can continue with all their activities as long as they don't hunt a wild mammal with their dogs. (It doesn't quite put it in those terms that but our lawyer has check through and it is pretty accurate except in some slight absurdities - if your dog is off the lead in a park and chases a squirrel, you **don't** have to shoot it, for instance).

Just some final points on different "recurring themes" .....

Impact on the rural economy : There is no need for the ban on hunting to adversely affect the rural economy or rural communities. Burns said that the impact would be almost imperceptible in the rural economy. And the situation has now changed, because the Countryside Alliance itself now says that most hunts are likely to adapt to the law and switch to legal alternatives such as drag or trail hunting. In any case, the number of people in jobs connected with hunting is very small compared with the numbers employed in other rural sectors. And opinion polls show that more people oppose hunting than support it in rural as well as urban areas. The hunt ban does not prevent people from riding horses, with hounds, dressed in hunting attire, drinking the stirrup cup, enjoying the company. It simply prevents them from chasing and killing wild animals for sport. It is unfortunate that,

for a long time, people who hunt were discouraged from facing up to the reality of Parliament's decision because the Countryside Alliance encouraged them to think that they ban would never become a reality. That may make it harder and slower for some hunts to adjust to the ban but we are confident they will do so

The Hunting Act should not have been pushed through using the Parliament Acts : The Hunting Act is now law. The Parliament Acts applied automatically, as certified by the Speaker of the House of Commons, once the House of Lords provoked their use by refusing for a second year running to pass legislation approved by the House of Commons. Pro-hunt peers also deliberately prevented a delay in commencement (until July 2006)to allow hunts more time to adjust to the new law. Having been passed by Parliament that has now been tested in court and upheld by five judges. Hunters must live within the Hunting Act and they should have no difficulty doing so. It's perfectly clear what is banned and what remains legal. Those who say they are law abiding citizens should not waste police time by trying to bend or stretch the law. We can't pick and choose which laws to obey. The main onus should not be on the police to prevent law breaking. The main onus should be on individuals to live within the law.

What about pest control - don't farmers need to control foxes ? Hunting is not primarily about pest control or providing jobs. It is primarily about chasing and killing animals for sport. Most farmers who have to deal with fox predation use other methods like "lamping" which Burns recognised as a far more effective means of pest control, and only a small proportion of foxes killed each year are killed by the hunt. Defra provides advice on options for effective pest control.

Why is there a focus on this legislation rather than more important issues ? The Government has not seen this as a top priority. Nevertheless, this most divisive issue crops up year after year - there have been 10 votes in 10 years in which a large majority of MPs have voted for a ban on hunting. It has occupied over 250 hours of Parliamentary time in recent years. That is why we promised at the last election to "enable Parliament to reach a conclusion on the issue" and we have kept the promise.. We put a lot of energy into trying to find a less divisive way forward, but there was no willingness to compromise small minority of people hunt. Far more people oppose it than support it but most people are not interested. This issue has been debated for long enough. It's time to move on. Let"s talk about something more important.

Won't there be attacks on shooting and fishing now ? No. Our manifesto promise to support shooting and fishing is every bit as strong and clear as out undertakings on hunting. This week we gave statutory endorsement to the code of conduct for gamekeepers using dogs underground to protect ground-nesting birds - and BASC (British Association for Shooting and Conservation) has acknowledged that our promise to them has been honoured through the so-called "gamekeepers exception". (The BASC fringe at Conference was a great success by the way - with ministers from Defra, DCMS and Home Office speaking - and they have kept their word on making the Code stringent from an animal welfare perspective, for foxes and dogs)

Please let me know if I can offer help on any more specific or detailed points.

All the best

Alun

From .....
Rt Hon Alun Michael MP

21/02/2005

Hunting

From: Jonathan Powell
Date: 17 February 2005

PRIME MINISTER

cc: Sally Morgan
Pat McFadden
David Hill
Kate Gross
Ann Shevas

HUNTING

The CA are very anxious that you say something tomorrow before the weekend's events. Ideally they would like you to announce an expert panel that would take evidence from both sides leading to new legislation. I have told them you cannot do either but that you will probably say something helpful on Monday.

All of your advisers – Hilary, Alan, Alastair, Sally, Pat – are unanimous that it would be mad to say anything before the weekend. And they think there is no prospect whatsoever of getting the PLP to repeal or amend the legislation banning hunting before or after an election. The PLP will react very badly to any suggestion by you that you are heading in that direction and such a statement will impact badly on the vote on counter terror legislation next Wednesday. The PLP basically don't want to revisit the issue. They just want us to see it through. Your advisers therefore think you should just stay out of the issue.

If, despite this advice, you want to do something to defuse what will undoubtedly be a giant mess over the weekend, you might put out a statement on the attached lines on Monday (we can revisit this on Monday in light of what happens). The problem is that this will probably irritate both sides. The CA doubt they could persuade their members to participate in such a forum. And we have no expectation that the RSPCA could either. So your proposal may fall flat and simply make the government the focus of the issue, while irritating the PLP by appearing to suggest the prospect of new legislation. On the other hand it would at least provide some way out for the hunters, who otherwise have nothing to lose.

I have not discussed this with DEFRA or any of the pro-ban organisations. We would at least need to alert DEFRA in advance of any statement. I am not sure how they would react.

We have arranged for Hazel to go up on Saturday and say that we have no problem with people going out on horses and doing things that are legal, but that people should not try to provoke the police by doing or saying they are going to do things against the law. The police have better things to do with their time.

John Jackson will write to the AG about non-prosecution. The AG will meet the DPP and the police about this next week.

JONATHAN POWELL

[I condemn the violence/disturbances over the weekend.]

If people want to go out on horseback for drag hunts etc and stay within the law there will be absolutely no problem at all. But the events of the weekend show there are strong feelings on both sides and that the law as drafted is going to be very difficult to enforce. I am sure we can all agree we do not want police time wasted on this issue, when they have so much to do that is vastly more important in fighting crime.

I think the best way forward is that while the legal case goes to the Lords we find a way of getting the two sides to sit down together under a neutral chairman to see if they can find a more satisfactory way of ensuring animal welfare. The government would be happy to facilitate such a discussion.

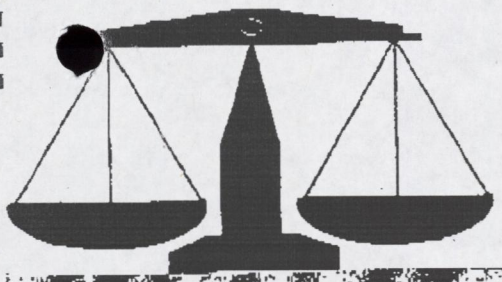
10 DOWNING STREET

1. Jonathan

This is the CPS's internal, interim guidance on prosecutions under the Hunting Act; for info.

Kate
22/2

2. BTMH pls — Kle — Hunting



020 7796 8335

Crown Prosecution Service

Headquarters
50 Ludgate Hill
London
EC4M 7EX
Switchboard: 020 7796 8000
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DX: 300850 Ludgate EC4

POLICY DIRECTORATE

P Hunting

Kate Gross 7807 3188

To: Ming Kong URGENT Fax: 0207 271 2453

From: Philip Geering Date: 17 February 2005

Re: HUNTING Pages: (including front cover)

Please acknowledge receipt YES / NO

3 pages

Urgent x ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Confidential

Dear Ming

HUNTING – DRAFT INTERIM GUIDANCE

Could you please let me know whether LSLO have any comments because we need to Issue the attached guidance on the CPS Intranet today as soon as possible.

Thank you.

Philip Geering
Director, Policy

17 February 2005

If this transmission is not properly received please call 0207 710 6089

Interim Guidance

6. The Hunting Act 2004 will therefore come into force this Friday, 18 February 2005.

7. In a statement issued after the Court of Appeal's ruling the Attorney General has indicated that it is not a matter for him to suspend an Act of Parliament and it was not the Attorney General who applied to the Court to have it suspended. The Attorney's statement continues by stating that he would meet in the near future with the Director of Public Prosecutions to consider what approach to take to such prosecutions. In the meantime, what follows is interim advice to prosecutors in relation to prosecutions that may arise under the Hunting Act.

8. The offences under the Hunting Act are summary only offences and therefore proceedings have to be commenced within the six month time limit otherwise they cannot be prosecuted.

9. Any further steps in relation to the legal challenge are at this stage hypothetical. It is for the House of Lords to decide whether to hear any appeal made by the Appellants. Policy Directorate will continue to monitor the situation. If the House of Lords decides to do so, consideration will then be given to what implications that has for prosecutions.

10. Whether such a petition will be successful, whether any application will be made for interim relief, whether that application would be granted and what timescale would apply, to all these questions is currently unknown. The Government's position remains clear that it will robustly resist any further challenge to the validity of the Hunting Act on this or any other ground.

11. Accordingly, at present, there is no reason why prosecutions should not proceed in the normal way, on the application of the Code for Crown Prosecutors, and prosecutors should invite the court to do so. If the defence wish to apply for adjournments that is a matter for them and ultimately it is a matter for the discretion of the court to whom applications for adjournment are made.

Enquiries

12. If you have any queries in relation to this minute which cannot be resolved through line management, please contact David Woodings, Policy Directorate, London (Tel: 020 7796 8332).

Philip Geering
Director, Policy
Policy Directorate

17 February 2005

020 7796 8335

To: CCPs and London Sector Directors, HQ Directors and HODs

From: Philip Geering, Director, Policy

Copy: Ken Macdonald QC, Director of Public Prosecutions, Chief Executive, Area Business Managers

Action required: Distribute to all lawyers and caseworkers

Action date: Immediate

Standard Subject: Criminal Casework

Summary: This minute provides interim guidance to prosecutors in relation to the approach to take to prosecutions under the Hunting Act 2004 in the light of the Court of Appeal judgment delivered on 16/2/05 in the case of Jackson & Ors v HM Attorney General

THE HUNTING ACT 2004 – THE PARLIAMENT ACT CHALLENGE: The Queen on the application of Jackson & Others v HM Attorney General [2005] EWCA Civ 126

Introduction

1. On 18 November 2004, pursuant to the provisions of the Parliament Act 1911, as amended by the Parliament Act 1949, the Hunting Act 2004, became an Act of Parliament without the assent of the House of Lords. The Hunting Act is due to come into force on 18 February 2005.

2. As is well known, the Countryside Alliance sponsored an application to challenge the validity of the Act claiming that the use of the Parliament Act 1949 was not valid. That challenge was first heard in the Administrative Court (Maurice Kay LJ and Collins J) which, on 28 January 2005, dismissed the application.

3. That judgment was appealed to the Court of Appeal. In its judgment, handed down on Wednesday 16 February 2005, the Court of Appeal dismissed the Appellants' legal challenge to the validity of the Hunting Act on the grounds that the 1949 Parliament Act was not validly passed. It was a unanimous decision by the Lord Chief Justice, Lord Phillips of Worth Matravers and Lord Justice May.

Applications for Leave to Appeal and Interim Relief

4. The Court of Appeal also refused leave to appeal to the House of Lords. The Lord Chief Justice commented that 5 judges had upheld this legislation. However, it is open to the Appellants' to petition the House of Lords for leave to appeal and they indicated that they would do that.

5. The Appellants also sought interim relief to suspend the operation of the Hunting Act by barring prosecutions from proceeding until the challenge is finally concluded. This application was also rejected.

THE HUNTING ACT 2004

NATIONAL STRATEGIC CONSIDERATIONS/PRINCIPLES

The purpose of this document is to seek to establish the strategic principles for the police service in respect of the above Act and reflects a degree of consultation within and without the Service.

This is the 'high level' strategic considerations and also the first stage in satisfying the requirement at paragraph 3.51 of the National Policing Plan 2005-8 for ACPO to produce detailed guidance to assist forces in preparing for the implementation of the Act. I anticipate early in the New Year complementing this with tactical considerations and by then hopefully legal 'points to prove' type guidance from the Crown Prosecution Service, with whom we are working closely but respecting their independence as with other government and voluntary agencies on both sides.

The following strategic principles seem relevant to most policing environments as far as the issue of hunting is concerned:

1. The primary responsibility is the prevention of harm to all people involved.

2 The duty of the police is to prevent disorder and if it occurs to minimise its consequences.

3 The police have a duty to prevent the commission of crime and offences.

4 The investigation of offences and the apprehension of offenders is a lower priority ordinarily than the maintenance of order and safety.

5 Police activity should take into account the various calls for service from various groups.

6 Police activity should be led by available intelligence and use where appropriate the National Intelligence Model.

7 An assessment of the likely community impact of police actions (or decision against action) should be made.

8 The priority accorded to proactive measures to tackle persons offending against the Hunting act (if any) should be driven by, amongst other influences:

a) such offences are not notifiable/recordable offences

b) resource considerations

c) what is practicable – safely

d) what is within the powers of the police

9 Similar considerations to 8) may apply to reactive investigations (i.e. those where persons allege breaches of the Hunting Act) – additionally police will need to take account of the possible consequences of frustrations building up if people feel a legitimate (if disproportionate) expectation is not being fulfilled.

10 Whilst police have a duty to enforce the law when breaches are apparent and to forestall potential breaches, the priority given to this should be determined locally, taking account of 8 and 9 and the National Police Plan's other priorities. Police are of course not the sole element of law enforcement and partners – public and private – have responsibilities too.

11 Operational Commanders may well find that the most proportionate and reasonable response to breaches of the Hunting Act lays in evidence gathering with a view to subsequent prosecution as the Act confers a power to arrest, not a duty. It is a matter that should be decided at the time and location with the appropriate justification being recorded as per individual force practice.

12 Police should always be sensitive to the huge passions on both sides of the debate that led to the Act outlawing the hunting of wild mammals with dogs – other than in exempt circumstances.

13 The principal responsibility for comment on the Act now rests with Government – particularly the Department for Farming, Food and Rural Affairs - although forces may well choose to pass comment, if asked, on local implementation.

Security Classification:	**NOT PROTECTIVELY MARKED**		
Disclosable under FOIA 2000:	**Yes**		
Author:	**ACC Nigel Yeo**	Force / Organisation:	**Sussex Police**
Date Created:	**17 January 2005**	Telephone:	**01273 404003**

There are attachments to paragraphs:

As well as being posted on the ACPO Intranet this is being sent by e-mail to Public Order Liaison Officers

Association of Chief Police Officers of England, Wales and Northern Ireland

25 Victoria Street, London SW1H 0EX

Telephone: 0207 227 3411 Fax: 0207 227 3400/3401

General Policing Business Area

Public Order Working Group Lead
Nigel Yeo
Assistant Chief Constable, Sussex Police

17 January 2005

To: ACC Operations

THE HUNTING ACT 2004

National Tactical Considerations

The purpose of this note is to offer some tactical considerations for forces whilst preparing operational orders concerned with the implementation of this Act. It is not intended as a template into which forces should feel obliged to "shoehorn" their individual circumstances. It is apparent that the term "hunting" covers a broad range of activity that is significantly different across the different forces affected by this Act.

This should be seen as complementary to the Strategic Considerations document issued on the ACPO Intranet on 23 December.

In the near future, further interpretation of the Act, its powers and "points to prove" in respect of offences will be issued.

These notes have been prepared after consultation with government and both huntspeople and the legitimate protesters' organisations.

Preparing for the Act

1 At present it is advisable to prepare on the basis that the Act will come into force on 18 February. Whilst much is being made of the various legal challenges to the Act, there is no certainty that the Act will be in any way deferred and to fail to prepare would leave us all vulnerable.

2 It would help enormously to identify single points of contact in forces which will allow proper exchange of information and communication – both with ACPO centrally (me) and with some of the stakeholders who at national level are keen also to identify single points of contact within their organisations to facilitate better communication with them. I have agreed to make these available and would be grateful if forces could identify them to me – they should be at strategic (ACC Operations/Chief Superintendent Operations Department type) level and tactical (Public Order or wildlife/hunt liaison officer) level. Could this information pleased be passed to Mrs Eileen Burton on 01273 404003 or preferably by e-mail to eileen.burton@sussex.pnn.police.uk

3 Forces should seek to gather intelligence regarding the activity of interested parties to determine as far as possible what hunting groups are intending to do (drag or trail hunting, disband, disobey, dog exercising or whatever); what anti-hunt groups are anticipating doing (continue to monitor activity, change to other animal related protest, etc) and the view of any "independents" (e.g. landowners who have allowed hunting without participating).

4 It would be helpful if any public statements (e.g. to police authorities) were to take account of the strategic consideration document (ACPO Intranet 23 December) and to look at the government lines to take where appropriate , the latest of which was dated 17 December and is obtainable from Tim Mahoney at tim.mahony@cabinet-office.x.gsi.gov.uk

After the Act is in force

1 A possible scenario that police are faced with is the potential of breaches of the peace between people on different sides of the hunting issue feeling either triumphant or frustrated. Forces will need to apply the normal principles of public order policing and the conflict management model on such occasions. Indeed, I

would feel that in the immediate aftermath of the implementation of the Act, this is likely to be the greater problem, and certainly has the greatest risk to public safety.

2 It is a matter to be determined locally what priority should be given to this, set against other operational priorities.

3 It is difficult to envisage a situation in which it will be practicable for police to intercept a hunt and persons in the act of hunting – indeed to do so is likely to present considerable difficulties, both in executing such action and discharging our duty for prisoners' property (including animals). It follows then that an entirely appropriate reaction may well be evidence gathering, either by police or in statement form from members of the public, to identify offences and offenders with a view to subsequent action, whether by summons or arrest.

4 I am advised that evidence gathered by overt means by identifiable police officers will not require authorisation under the Regulation of Investigatory Powers Act (RIPA); however, covertly obtained video would. It is suggested that use of helicopters to secure video evidence would be unwise, given the risks to human health caused by frightening horses or hounds with helicopters. Equally, the viability of pursuing hunts on foot, horseback or in suitable vehicles, I would suggest is slim.

5 There is the potential for these matters to go across force boundaries, and the good practice that has existed before of inter-force co-operation would continue to be vital in this area.

6 It is possible that a tactic of those who support hunting will be to seek to get themselves prosecuted as a way of testing the law if they do not get what they desire from the current judicial processes. This may take the form of mass confessions. It is suggested that such activity should be reported and the matter considered by the local Crown Prosecution Service as to whether it passes both the evidential and public interest tests for prosecution.

7 It is worth noting that while offences under the Hunting Act carry a fine of up to £5,000, they are not recordable or notifiable under the national crime recording standards and I am also advised by Home Office lawyers that persons convicted of offences under the Hunting Act will not secure a criminal record and a unique reference number from the National Identification Bureau.

8 It may be felt reasonable and proportionate to warn hunts which we believe to be acting unlawfully, rather than seek to expend the effort in securing a prosecution but still achieving the goal of legality. A prosecution file would draw attention to this warning were it not heeded.

9 Forces should seek to ensure that their communications rooms are supplied with the "line to take" that the force has adopted, given that they are likely to receive allegations of hunting in progress from the public - not least because we can anticipate that people phoning the RSPCA will be redirected to the police.

10 It is expected that forces will receive a number of allegations from well meaning members of the public alleging that hunting is going on in contravention of the ban. We may be better equipped to deal with these if we have been able to establish from hunting groups which intend to convert to legal activity where they are – thus being able to discount well-meaning but inaccurate allegations.

11 A number of organisations who have previously campaigned against hunting such as such as Royal Society for Prevention of Cruelty to Animals (RSPCA), International Fund for Animal Welfare (IFAW) or League Against Cruel Sports (LACS), have expressed a desire to help police nationally in policing the implementation of the Act which may well be replicated locally. The RSPCA may chose to seek to act as a prosecuting authority, largely in liaison with the Crown Prosecution Service. Equally, various hunting bodies such as the Masters of Foxhounds Association (MFHA) have engaged in constructive dialogue.

12 The Countryside Alliance (CA) and Council for Hunting Associations have published on the CA website a guidance entitled Hunting Handbook 2005 which seeks to identify how hunting can be conducted with the provisions of the Act. Forces may find it advantageous to seek to identify when and where such legal activity is taking place, if only to be able to deal with well-meaning but misguided allegations of instances of contraventions of the law.

13 It can be anticipated that groups such as IFAW, who employ hunt monitors, will continue to do so. They are committed at national level to working with police to secure prosecutions relevant to anything they identify. Their hunt monitors may become witnesses, as may others. We should be mindful of their safety as with other persons attending hunts in any capacity.

14 Whilst forces may choose to try and obviate the need to seize animals, the RSPCA have declared a willingness to advise and work with forces should it be necessary.

15 Where hunting is being conducted legally within the provisions of the Act then offences of aggravated trespass would still be committed by people interfering with such activity.

16 Helpful dialogue should be possible with relevant agencies in a locality, including hunts that continue to exist but seek to act legally, legitimate organisations opposed to hunting such as those mentioned above, the Crown Prosecution Service and local landowners' representatives. It is suggested that we be frank with such groups, identifying that the police role is to enforce the law but that the implementation of the Hunting Act must be set against other operational priorities facing the Chief Constable.

17 It has been suggested and would need local confirmation that some landowners, especially institutions (such as the Forestry Commission) may close to bar all hunting (legal or otherwise) on their land – at least in the short term. Local clarification of such decisions would make sense.

18 It would seem good practice for forces to regularly refresh any community impact assessment made after implementation and also should there be any high profile cases.

17 In addition to gathering intelligence and information for the purposes of policing this activity, forces may anticipate either them or their police authorities being requested for information as to current activity. Any requests nationally will be handled by the Police National Co-ordination Centre. It is possible that forces will receive requests by letter identifying their stance and seeking explanation of their reaction to the Hunting Act - I have had several already. I would venture to suggest that additional to the points made by government, it is helpful to retain our impartiality by pointing out we will enforce the law in the context of local priorities and set against other demands on police, bearing in mind this has not been afforded high priority in the National Policing Plan, breaches of the Act are not themselves notifiable or recordable offences and not covered by national crime recording standards.

Nigel Yeo
Public Order Working Group Lead
Assistant Chief Constable

02072712432

OFFICE OF THE ATTORNEY GENERAL

9 Buckingham Gate, London, SW1E 6JP

from: Fiona McElroy – press and private secretary to attorney general
t: 0207 271 2405
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FAXED

URGENT.

to: Jonathan Powell
fax: 020 7839 9044

Date: 17-Feb-05 Time: 8:31pm Pages:

Classification: SECRET / CONFIDENTIAL / RESTRICTED / UC

Jonathan

Please find attached the interim guidance that the CPS has drafted today which has now been agreed with the Attorney.

It is due to be posted on the CPS intranet only as guidance for prosecutors tomorrow morning and is consistent with the statement we issued yesterday. This will **not** be published proactively.

Apologies for the delay in sending. Negotiations have been ongoing all day.

If you have any queries or need to speak about this tonight, please contact me on 07970 122748.

Fiona

02072712432

To: CCPs and London Sector Directors, HQ Directors and HODs

From: Philip Geering, Director, Policy

Copy: Ken Macdonald QC, Director of Public Prosecutions, Chief Executive, Area Business Managers

Action required: Distribute to all lawyers and caseworkers

Action date: Immediate

Standard Subject: Criminal Casework

Summary: This minute provides interim guidance to prosecutors in relation to the approach to take to prosecutions under the Hunting Act 2004 in the light of the Court of Appeal judgment delivered on 16/2/05 in the case of Jackson & Ors v HM Attorney General

THE HUNTING ACT 2004 – THE PARLIAMENT ACT CHALLENGE
The Queen on the application of Jackson & Others v HM Attorney General [2005] EWCA Civ 126

Introduction

1. On 18 November 2004, pursuant to the provisions of the Parliament Act 1911, as amended by the Parliament Act 1949, the Hunting Act 2004, became an Act of Parliament without the assent of the House of Lords. The Hunting Act is due to come into force on 18 February 2005.

2. As is well known, the Countryside Alliance sponsored an application to challenge the validity of the Act claiming that the use of the Parliament Act 1949 was not valid. That challenge was first heard in the Administrative Court (Maurice Kay LJ and Collins J) which, on 28 January 2005, dismissed the application.

3. That judgment was appealed to the Court of Appeal. In its judgment, handed down on Wednesday 16 February 2005, the Court of Appeal dismissed the Appellants' legal challenge to the validity of the Hunting Act on the grounds that the 1949 Parliament Act was not validly passed. It was a unanimous decision by the Lord Chief Justice, Lord Phillips of Worth Matravers and Lord Justice May.

Applications for Leave to Appeal and Interim Relief

4. The Court of Appeal also refused leave to appeal to the House of Lords. The Lord Chief Justice commented that 5 judges had upheld this legislation. However, it is open to the Appellants' to petition the House of Lords for leave to appeal and they indicated that they would do that.

5. The Appellants also sought interim relief to suspend the operation of the Hunting Act by barring prosecutions from proceeding until the challenge is finally concluded. This application was also rejected.

Interim Guidance

6. The Hunting Act 2004 will therefore come into force this Friday, 18 February 2005.

7. In a statement issued after the Court of Appeal's ruling the Attorney General has indicated that it is not a matter for him to suspend an Act of Parliament and it was not the Attorney General who applied to the Court to have it suspended. The Attorney's statement continues by stating that he would meet in the near future with the Director of Public Prosecutions to consider what approach to take to such prosecutions. In the meantime, what follows is interim advice to prosecutors in relation to prosecutions that may arise under the Hunting Act.

8. The offences under the Hunting Act are summary only offences and therefore proceedings have to be commenced within the six month time limit otherwise they cannot be prosecuted.

9. Any further steps in relation to the legal challenge are at this stage hypothetical. It is for the House of Lords to decide whether to hear any appeal made by the Appellants. Policy Directorate will continue to monitor the situation. If the House of Lords decides to hear an appeal consideration will then be given to what implications that has for prosecutions.

10. Whether such a petition will be successful, whether any application will be made for interim relief, whether that application would be granted and what timescale would apply, to all these questions is currently unknown. The Government's position remains clear that it will robustly resist any further challenge to the validity of the Hunting Act on this or any other ground.

11. At present, in accordance with the Code prosecutors should:

- Encourage the police locally to seek early pre-charge advice on evidential issues, public interest issues and how to focus investigations having in mind the sensible desired outcome of an investigation;

- encourage investigations to proceed to an appropriate stage before a decision is taken on the disposal of the case so that such decisions are well informed, and to use as appropriate pre-charge bail to facilitate this;

- ensure that in Statutory Charging Areas the charging decision is taken by the CPS in accordance with the Director's revised charging Guidance;

- encourage investigators in shadow charging Areas to seek CPS advice on the charging decision (we will discuss with ACPO making this a mandatory arrangement);

- ensure that the appropriate alternatives to prosecutions are considered in individual cases in the usual way, including taking no further action, informal police warnings, and cautions; and

- proceed to charge and prosecution when the tests in the Code for Crown Prosecutors are satisfied, and selecting the appropriate charge (whether under the Hunting Act or otherwise) in accordance with the Code for Crown Prosecutors.

Enquiries

12. This interim guidance will be inserted into the CPS Legal Guidance.

13. If you have any queries in relation to this minute which cannot be resolved through line management, please contact David Woodings, Policy Directorate, London (Tel: 020 7796 8332).

Philip Geering
Director, Policy
Policy Directorate, CPS HQ

17 February 2005

From: Jonathan Powell
Date: 17 February 2005

PRIME MINISTER

cc: Sally Morgan
Pat McFadden
David Hill
Kate Gross
Ann Shevas

HUNTING

The CA are very anxious that you say something tomorrow before the weekend's events. Ideally they would like you to announce an expert panel that would take evidence from both sides leading to new legislation. I have told them you cannot do either but that you will probably say something helpful on Monday.

All of your advisers – Hilary, Alan, Alastair, Sally, Pat – are unanimous that it would be mad to say anything before the weekend. And they think there is no prospect whatsoever of getting the PLP to repeal or amend the legislation banning hunting before or after an election. The PLP will react very badly to any suggestion by you that you are heading in that direction and such a statement will impact badly on the vote on counter terror legislation next Wednesday. The PLP basically don't want to revisit the issue. They just want us to see it through. Your advisers therefore think you should just stay out of the issue.

If, despite this advice, you want to do something to defuse what will undoubtedly be a giant mess over the weekend, you might put out a statement on the attached lines on Monday (we can revisit this on Monday in light of what happens). The problem is that this will probably irritate both sides. The CA doubt they could persuade their members to participate in such a forum. And we have no expectation that the RSPCA could either. So your proposal may fall flat and simply make the government the focus of the issue, while irritating the PLP by appearing to suggest the prospect of new legislation. On the other hand it would at least provide some way out for the hunters, who otherwise have nothing to lose.

I have not discussed this with DEFRA or any of the pro-ban organisations. We would at least need to alert DEFRA in advance of any statement. I am not sure how they would react.

We have arranged for Hazel to go up on Saturday and say that we have no problem with people going out on horses and doing things that are legal, but that people should not try to provoke the police by doing or saying they are going to do things against the law. The police have better things to do with their time.

John Jackson will write to the AG about non-prosecution. The AG will meet the DPP and the police about this next week.

JONATHAN POWELL

[I condemn the violence/disturbances over the weekend.]

If people want to go out on horseback for drag hunts etc and stay within the law there will be absolutely no problem at all. But the events of the weekend show there are strong feelings on both sides and that the law as drafted is going to be very difficult to enforce. I am sure we can all agree we do not want police time wasted on this issue, when they have so much to do that is vastly more important in fighting crime.

I think the best way forward is that while the legal case goes to the Lords we find a way of getting the two sides to sit down together under a neutral chairman to see if they can find a more satisfactory way of ensuring animal welfare. The government would be happy to facilitate such a discussion.

JP.
cc KEC

THE TREASURY SOLICITOR

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Mr Jonathan Powell
No 10 Downing Street
London SW1

Please quote: LT4/2786F/DMM/D1

Your reference:

Date: 17 February 2005

Pm
walking stick
17/2.

Dear Mr Powell

RE: HUNTING ACT

I enclose a copy of the approved judgment of the Court of Appeal in this matter.

Yours sincerely

Michael Vidal
for the Treasury Solicitor

Neutral Citation Number: [2005] EWCA Civ 126

Case No: C1/2005/0201

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
LORD JUSTICE MAURICE KAY AND MR JUSTICE COLLINS
CO/5791/2004

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/02/2005

Before :

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
LORD PHILLIPS OF WORTH MATRAVERS, MR
and
LORD JUSTICE MAY

Between :

The Queen on the application of Jackson & Ors	**Appellant**
- and -	
HM Attorney General	**Respondent**

Sir Sydney Kentridge QC, Mr Richard Lissack QC, Mr Martin Chamberlain and Mr Marcus Hayward (instructed by **Messrs Allen & Overy LLP**) for the **Appellant**
Lord Goldsmith QC, Mr Philip Sales and Mr Clive Lewis (instructed by **Treasury Solicitor**) for the **Respondent**
Mr David Pannick QC and Mr Gordon Nardell (instructed by Messrs Collyer-Bristow) for the **Interveners**
Hearing date : 8 February 2005

Approved Judgment

This is a Judgment of the Court to which each member has contributed.

Introduction

1. This is an appeal from a decision of the Administrative Court given in judgments delivered by Maurice Kay LJ and Collins J on 28 January 2005. This is no ordinary public law case. At issue is the validity of two Acts of Parliament, the Parliament Act 1949 ('the 1949 Act') and the Hunting Act 2004 ('the Hunting Act'). It is the validity of the 1949 Act that is critical, for the Hunting Act was enacted pursuant to provisions of the 1949 Act.

2. The 1949 Act was purportedly enacted pursuant to the provisions of the Parliament Act 1911 ('the 1911 Act'). The 1911 Act laid down circumstances in which an Act of Parliament could be enacted without the assent of the House of Lords. The 1949 Act was so enacted under the circumstances specified, but purported to amend those circumstances. The critical issue is whether the 1911 Act permitted this.

3. In the Administrative Court this case was treated as an ordinary case turning on a point of statutory interpretation. It is not such a case. English courts do not normally have jurisdiction to consider the validity of an English statute. So far as the validity of a statute is concerned, the following observation of Lord Campbell in *Edinburgh and Dalkeith Railway Co. v Wauchope* (1842) 8 Cl & F 710 at 725 has always been accepted as correct:

> "...all that a Court of Justice can do is look to the Parliament Roll; if from that it should appear that a bill has passed both Houses and received the Royal Assent, no Court of Justice can inquire into the mode in which it was introduced into Parliament, nor into what was done previous to its introduction, or what passed in Parliament, during its progress in its various stages through Parliament."

4. The issue to which the appeal relates is therefore one of considerable constitutional significance. However, while the success of this appeal is entirely dependant upon the complaints which are made as to the lawfulness of the provisions of the 1949 Act, as is well known, the Hunting Act (which is intended to make the hunting of wild animals, and especially foxes, by dogs unlawful) contains provisions that are highly controversial and bitterly opposed by substantial sections of the public.

5. The preamble to the 1949 Act states:

> "Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Commons, in this present Parliament assembled, in accordance with the provisions of The Parliament Act, 1911 ("the 1911 Act") by the authority of the same, as follows: -"

6. The preamble to the Hunting Act provides:

> "BE IT ENACTED by The Queen's most Excellent Majesty, by and with the advice and consent of the Commons in this

present Parliament assembled, in accordance with the provisions of the Parliament Acts 1911 and 1949, and by the authority of the same, as follows:-"

7. It will be noted that in both cases, reference is made to the Parliament Act, 1911. The validity of that Act is not disputed. It was, however, legislation which, at the time that it was passed was also highly controversial and, according to what we were told in the course of argument, was legislation which was preceded by a general election at the insistence of King Edward VII, who died before it was enacted, and was succeeded by King George V.

8. That the 1911 Act should be controversial was hardly surprising since the 1911 Act dramatically reduced the power of the House of Lords. Its effect, which is not in dispute, was to give the House of Commons the dominant role in Parliament. Prior to the 1911 Act, the House of Lords had an unlimited power to prevent a Bill becoming law by refusing to consent to its enactment. But after it came into force, it substantially restricted the ability of the House of Lords to delay the enactment of legislation. It achieved this by providing that, after a period of 2 years had elapsed in the circumstances described in the 1911 Act, a Bill could become an Act of Parliament without it being passed in the House of Lords. The 1911 Act can be regarded as having established a new constitutional settlement.

9. The 1949 Act amended the 1911 Act by reducing that period of 2 years to 1 year. However, the provisions of the 1911 Act were relied upon to enact the 1949 Act. On behalf of the Appellants, Sir Sydney Kentridge QC contends that this was not permissible as a matter of law. He submits that the 1911 Act could only be lawfully amended with the consent of the House of Lords. Accordingly, as the Hunting Act was enacted relying upon the 1911 Act as amended by the unlawful 1949 Act, the Hunting Act is also unlawful.

10. Lord Goldsmith QC, HM's Attorney General who appeared before us disputes that this is the position. He contends that the amendments made to the 1911 Act by the 1949 Act were perfectly lawful. So, it follows, is the Hunting Act. In advancing his case, he is supported by Mr David Pannick QC who appeared on behalf of the League against Cruel Sports, ("the League") who were given permission to make submissions in support of the Attorney General's case.

11. It is unusual, and in modern times probably unprecedented, for the Courts to have to rule on the validity of legislation that has received the Royal Assent. (But as to earlier periods in our history see the *Prince's Case* 8 Co Rep 1A). However, the Attorney General did not dispute that the Courts could properly adjudicate on this issue and in the court below, Maurice Kay LJ remarked (paragraph 14) 'the Attorney General wisely takes no point on justiciability'. Despite these exchanges we were concerned to satisfy ourselves that the issue before us was justiciable. We asked the Attorney General how this was. It was a question to which he gave us no convincing answer. He said that no point was taken on justiciability because it was recognised that it was desirable that the Courts should decide the issue. When we suggested that this might not be a valid basis for assuming jurisdiction, he asserted that there was no absolute rule that the Courts could not consider the validity of a statute. Here the Courts had jurisdiction because the issue was one of statutory interpretation and because the Appellants were contending that the 1949 Act was not a statute at all.

12. The reality is that the 1911 Act was a most unusual statute. By that statute the House of Lords, the House of Commons and the King used the machinery of legislation to make a fundamental constitutional change. Nearly 100 years after the event, the court has been invited to rule on the precise nature and extent of that change. We have decided that it was right for the Administrative Court to accept that invitation. The authority of the 1949 Act purported to be derived from the 1911 Act. The latter Act, by s.3, expressly envisaged the possibility that the validity of subsequent Acts enacted pursuant to its provisions might be subjected to judicial scrutiny. The effect of the 1911 Act was undoubtedly susceptible to judicial analysis. However, in considering that effect, the Administrative Court was acting as a constitutional court. There was no precise precedent for the jurisdiction that it was exercising.

13. The conclusion to which we have come is that Lord Goldsmith was correct to make the concession that he did. The determination of questions of interpretation and ascertaining the effect of legislation is part of the normal diet of the courts. While we will refer to what has happened in debates in Parliament concerning the issue before us, we will not be adjudicating upon the propriety of what occurred in Parliament. The circumstances in which it will be appropriate for the Courts to become involved in issues of this nature are limited, but in this case it is perfectly appropriate for the Courts to be involved. If the courts did not adjudicate on the issue, there would be great uncertainty as to the legal situation, which could have most unfortunate consequences after 19 February 2005, when the Hunting Act is meant to come into force. In exercising this role, the Administrative Court and this Court on appeal are seeking to assist Parliament and the public by clarifying the legal position when such clarification is obviously necessary

14. The Appellants are members of the Countryside Alliance, a body which opposed the banning of fox hunting, but they bring these proceedings in their personal capacity. Mr Jackson is the Chairman of the Countryside Alliance and a landowner whose land is within the area of a hunt, although he personally does not participate in hunting. Mr Martin is a hunt employee and professional huntsman whose livelihood and tied accommodation depend on the lawfulness of hunting. Mrs Hughes participates in hunting and she and her family have a business which is ancillary to hunting.

15. It is because the Hunting Act is due to come into force on 19 February 2005 that the resolution of this litigation is so urgent. So far, the proceedings have been dealt with with satisfactory expedition. The proceedings were commenced on 19 November 2004; the day after the Hunting Act received the Royal Assent. On 28 January 2005, Maurice Kay LJ and Collins J gave judgments of commendable clarity, dismissing the claim. We heard this appeal on 8 February 2005 and today give our judgment.

The background to the Parliament Acts

16. We agree with Sir Sydney Kentridge that it is necessary to consider the relevant statutory provisions against their background and for this purpose we adopt the succinct summary set out in Sir Sydney's skeleton argument. It is in these terms:

> "It is well known that, following the Liberal election victory of 1906, the Lords on several occasions rejected the legislation proposed by the Liberal Government. This series of rejections culminated in 1909 when the Lords rejected Lloyd George's

> Budget by 350 votes to 75. A general election was called and the Liberal Government was re-elected in 1910. The House of Lords then accepted Lloyd George's Budget, but the incident spurred calls for reform of that House. In 1910, the newly formed Government introduced the Parliament Bill, which was designed to extinguish the House of Lords' power over Finance Bills and to limit its powers over other Bills. The Government announced that rejection of this measure by the Lords would lead to a further dissolution of Parliament. That step became necessary and a further general election took place in December 1910, again resulting in the re-election of the Liberal Government.
>
> After the election, the Commons again passed a Parliament Bill. The Lords again attempted to amend it, but the Commons insisted on its Bill, which was eventually passed by the Lords in 1911, after the Prime Minister, Asquith, had publicly announced his intention to ask the King, George V, to create large numbers of new Liberal peers if necessary. The Bill so passed became the Parliament Act 1911.
>
> The 1949 Act was passed using the provisions of the 1911 Act, that is to say, by the Commons alone in three successive sessions, two years having elapsed between the date of Second Reading in the first of those sessions and the date on which it passed the House of Commons in the third."

17. Although the new route provided by the 1911 and 1949 Acts for enacting legislation did involve a significant change in the balance of power between the two Houses of Parliament, as we will see later, the number of occasions on which the Commons resorted to the Acts in order to enact legislation were remarkably limited. Usually the Commons, as the democratically elected House, could achieve its objectives without resorting to the Acts. It is, however, undoubtedly the case that the fact that the alternative route was available to the Commons made the Lords more compliant to the will of the Commons.

The relevant legislative provisions

18. The starting point is the 1911 Act. However, in order to recognise the extent of the changes which the 1911 Act brought about, it is helpful to refer to Professor Dicey's classic statement as to what is usually understood by the Sovereignty of Parliament, which is a basic constituent of our constitutional arrangements. In an *Introduction to the Study of the Law of the Constitution*, Professor Dicey described the position in these terms:

> "Parliament means, in the mouth of a lawyer.... the King, the House of Lords and the House of Commons; these three bodies acting together may be aptly described as the 'King in Parliament', and constitute Parliament.

> The principle of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament."

19. The 1911 Act significantly qualified that statement by curtailing the role of the House of Lords. We have already seen the consequence reflected in the changed language of the preamble of the 1949 and Hunting Acts, which omit any reference to the House of Lords. The position can be contrasted with the preamble to the 1911 Act, which made the traditional reference to the Lords Spiritual and Temporal and the Commons. The preamble to the 1911 Act reads:

> "Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:
>
> And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation:
>
> And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act appears for restricting the existing powers of the House of Lords:
>
> Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, …"

20. That Preamble makes it clear that the 1911 Act was only a stepping stone on the way to even more fundamental changes to the House of Lords. It was not to be abolished but to be recreated on a popular instead of hereditary basis. It is not suggested that the 1911 Act was to be the vehicle for these changes. It includes the more limited interim changes.

21. The first change made by the 1911 Act was in relation to Money Bills alone. S.1(1) of the 1911 Act provided:

> "If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified, notwithstanding that the House of Lords have not consented to the Bill."

22. Turning to s.2, that section contained the critical provisions on which much of the argument before us turned. S.2 provides:

> "(1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons directs to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill:
>
> Provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the third of those sessions.
>
> (2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.
>
> (3) A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.
>
> (4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the House of Lords in the third session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:
>
> Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second or third session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords."

23. S.3 provides that the certificates of the Speaker as to the matters in ss.1 and 2 shall be conclusive for all purposes and shall not be questioned in any court of law. The arguments in the present case do not involve any such questioning. The different enacting language which appears in Acts of Parliament passed pursuant to the 1911 Act, is provided for in s.4. The preamble to the 1949 Act provides an example of this.

24. S.7 of the 1911 Act reduced the maximum duration of Parliament from seven years to five years, thus the reference in s.2(1) to extending that maximum beyond five years. It is to be noted that this provision was introduced by amendment and Mr Cassel said, when introducing the amendment:

> "if we are to have Single Chamber Government thrust upon us, then at least let us withdraw from that Single Chamber the power of extending and perpetuating its own existence"

The Government was initially opposed to the amendment because it assumed the amendment was unnecessary but in the House of Lords the amendment was agreed. When the Bill returned to the Commons, the amendment was accepted by Mr Churchill, the then Home Secretary, who explained;

> "We are, I think, bound to make every effort in our power to give reasonable reassurance where we can, without prejudice to any essential principles of the Bill, to persons to whom we are opposed." (Extracted from *Can the House of Lords be Abolished?* (1979) 95 LQR 54-55 Peter Mirfield)"

25. The 1949 Act purported to amend the 1911 Act by amending s.2. In s.2(1) and s.2(4) the words "in three successive sessions", "for the third time", "in the third of those sessions", "for the third time", "in a third of those sessions", "in the third session" and "in the second or third session" respectively, were amended so that ,wherever it appeared, the word "third" became "second" and the word "three" became "two". In addition, the requirement that "two years have elapsed" became "one year has elapsed".

26. It is not, however, necessary to refer further to the 1949 Act since the argument between the parties does not turn on the language used by the 1949 Act, but on the fact that it was passed relying on the restrictions on the role of the House of Lords contained in the 1911 Act. Put shortly, what Sir Sydney contends, on behalf of the Appellants, is that the only manner in which the procedural and temporal conditions of the 1911 Act could be amended was, by obtaining, both the consent of the Commons and the House of Lords to its amendment.

27. In relation to the legislation, we would draw attention to the following points:

a) The 1911 and the 1949 Acts did not remove but restricted the involvement of the House of Lords in the Parliamentary process. The restriction did not affect Bills introduced in the Lords which still require the consent of both Houses to their enactment.

b) Even in the case of a Bill introduced in the Commons, the House of Lords was left with a very significant role. The House of Lords can

debate and revise a Bill although its amendments can ultimately be rejected by the Commons.

c) Nevertheless, the 1911 Act significantly redefined the relationship between the two Houses by restricting the circumstances in which the consent of the House of Lords was required before a Bill became law.

d) The 1949 Act did not remove any restriction contained in the 1911 Act. It only reduced the period that had to elapse before the consent of the Lords could be dispensed with. For example, it did not attempt to extend the maximum duration of Parliament beyond 5 years. The changes made by the 1949 Act were far less significant than the changes made to the constitutional position of the House of Lords by the 1911 Act.

Contentions of the Appellants

28. In support of their appeal, Sir Sydney advances 3 main submissions. He submitted (as set out in his skeleton arguments) that the Divisional Court erred in:

"(i) describing legislation passed under the 1911 Act as 'more akin to primary legislation' and as having 'all the trappings of primary legislation' (**'Legislation passed under the 1911 Act is not primary, but delegated or subordinate legislation'**);

(ii) holding inapplicable to this case the established principle that, where an Act of Parliament confers on a body the power to legislate subject to stipulated conditions, it does not, in the absence of express words, authorise that body to vary the stipulated conditions or to enlarge its own powers (**'The principle applies that powers given by an enabling Act may not be enlarged or modified save by express words of authorisation'**); and

(iii) holding that, on a proper construction of the 1911 Act read as a whole, s.2(1) of that Act should be read as enabling the Commons, without the consent of the Lords, to attenuate or remove completely the very conditions on which its law-making power was granted (**'On a proper construction, the 1911 Act does not authorise the Commons to remove or attenuate the conditions on which its law-making power was granted'**)."

29. Those 3 grounds relate to the primary reasons relied on by the Administrative Court for dismissing the claimant's application. However, two further contentions were relied upon by the Attorney General in the court below and the Appellants also complain about the views of the Administrative Court as to these contentions. The complaints are:

"(iv) expressing the views that (a) ministerial statements made during the passage of the Bill which became the 1911 Act were admissible in support of the Attorney General's construction and (b) such statements disclose that "the central issue in this case was in the minds of Parliamentarians in both Houses";

(iv) expressing the view that legislation passed after the 1911 and 1949 Acts could be used as an aid to construction of the 1911 Act."

Legislation passed under the 1911 Act is not primary, but delegated or subordinate legislation.

30. This ground of appeal goes to the heart of the distinction between the case advanced by the Appellants and that advanced by the Attorney General, supported by the League. The Attorney General contends that, as a matter of construction of the Acts, any Bill enacted in accordance with the provisions of the 1911 Act, or the 1911 Act as amended by the 1949 Act, has the same force and effect as any Bill enacted without reliance on those Acts. His contention is that the 1911 Act created a second procedure for enacting legislation and that that procedure was then amended by the 1949 Act. As long as the relevant procedure set out in the Acts is followed, then, on the Attorney General's argument, this results in legislation that is in every respect identical to legislation passed in the traditional way; that is with the consent of both the Commons and the Lords. The resulting legislation is not inferior legislation and so, critically, it could be used to amend the 1911 Act.

31. Sir Sydney vehemently disagrees. His contention is that legislation that is made following the procedure set out in the 1911 Act is legislation of a different nature. It is legislation which depends for its validity upon the 1911 Act. It is to be distinguished from legislation passed in the traditional way which is not dependent for its existence upon earlier legislation. He therefore describes the legislation made under the 1911 Act as delegated or subordinate legislation when compared with "primary" legislation made with the consent of both Houses of Parliament in the traditional way.

32. That there is the distinction, which Sir Sydney advances, is, in our view, undoubtedly correct. It is reflected in the fact that the Attorney General is right to accept the role of the Court which the Administrative Court exercised and which we are seeking to exercise on this appeal. It is because the 1911 Act has to be complied with (whether in its original or, if the amendment is valid, in its amended form) that the Courts' involvement is appropriate.

33. Although we are here concerned with Parliamentary powers, the role of the Court is the same as it is with any other power exercised under statutory authority: the statutory authority here being the 1911 Act. The Court can determine whether what is said to have happened *under* that Act in fact complied with that Act.

34. To an extent, the issue is one of definition as to what is meant by primary or subordinate legislation. Sir Sydney refers to *Craies* on legislation. (8th ed., 2004 at paragraph 1.21). Here it is stated:

> "All legislation can be classified as primary or subordinate. Quite simply, legislation is subordinate if it owes its existence or authority to other legislation: if it does not, it is primary."

35. Drawing this distinction between primary and secondary legislation, it is perfectly possible properly to regard the 1949 Act, as being subordinate legislation if, contrary to the Appellants' submission, it is legislation at all.

36. The point is made even more clearly by Sir William Wade in *Constitutional Fundamentals* (pp 27 – 28) when he insisted, contrary to the views of Professor de Smith, that legislation passed under the 1911 Act should be regarded as delegated. Sir William said:

> "Professor de Smith maintained that by these Acts Parliament had redefined itself for particular purposes: the sovereign legislature of Queen, Lords and Commons had provided an optional alternative consisting of Queen and Commons only; and this new body could legislate in accordance with the Act for all purposes other than prolongation of the life of Parliament. Such legislation, he said, was primary and not delegated; yet he accepted that if it purported to prolong the life of Parliament it would be a nullity. With this last point I fully agree, but I cannot square it with the notion that legislation enacted under the Parliament Acts is primary. The acid test of primary legislation, surely, is that it is accepted by the courts at its own face value, without needing support from any superior authority. But an Act passed by Queen and Commons only has no face value of its own. As Coke put it in *The Prince's Case,* "If an Act be penned, that the King with the assent of the Lords, or with the assent of the Commons, it is no Act of Parliament for three ought to assent to it scil. The King, the Lords and the Commons." An Act of Queen and Commons alone is accepted by the courts only because it is authorised by the Parliament Act – and indeed it is required to recite that it is passed "in accordance with the Parliament Acts 1911 and 1949 and by authority of the same". This is the hall-mark of subordinate legislation and I do not understand how it is possible to disagree with Professor Hood Phillips when he says that it is the correct classification."

Sir Sydney submits that there can be no answer to this reasoning.

37. However, on this subject, we were referred to a letter written by Lord Donaldson of Lymington to the three leading counsel involved in this case. Out of fairness to Sir William, he drew attention to a letter that Sir William had written to him. Unfortunately, Lord Donaldson has not retained the letter. However, his understanding of what Sir William wrote was that he was saying that, whilst adhering

to his view that the 1949 Act was a species of subordinate legislation, he did not agree that from this it followed that the 1949 Act was ultra vires, always provided that it did not seek to extend the life of the Parliament.

38. The Attorney General has placed before us the views of other distinguished academics beside Sir William and he submits, correctly, that if this matter is to be resolved by counting heads, then there is more support for his view than that contended for by Sir Sydney. However, this is not a head counting exercise.

39. What is clear is that whatever description is appropriate to apply to the 1911 and 1949 Acts, it is the 1911 Act that is the source of authority for the creation of the 1949 Act. The argument of the Attorney General, that once legislation has been created by the 1911 Act it is no different from legislation created in the traditional way with the consent of both Houses, is one which we question. If it is correct, then that is the end of the Appellants' case since it means that as long as the basic requirements of the 1911 Act as amended were procedurally complied with, the contents of an Act made by this procedure could not be questioned. Indeed, in these circumstances the Certificate of the Speaker would probably be conclusive because it is his responsibility to ensure compliance with the procedure set out in the 1911 Act.

40. The main reason for our reservations as to this outcome is that it involves it being accepted that the 1911 Act could be used to extend the life of Parliament contrary to the express language of s.2(1) of the 1911 Act for such period as the Commons determines. All that would be required would be for Parliament, in the shape of the Commons, to pass legislation deleting the words "Bill containing any provision to extend the maximum duration of Parliament beyond five years" and then to pass further legislation extending the life of Parliament. This would be quite contrary to the express limitation on extending the duration of Parliament contained in s.2(1) and we are not prepared to accept that this is the position.

41. We appreciate that it is most unlikely that the Commons would ever contemplate seeking to use the 1911 Act, either in its amended or unamended form, to enact legislation to which the House of Lords had not consented, in order to extend the duration of Parliament or, for that matter, to abolish the House of Lords. However, if, contrary to our expectations, it did contemplate such action we would regard this as being contrary to the intention of Parliament when enacting the 1911 Act. So, here we disagree with the views to the contrary expressed by the Administrative Court.

42. The purpose of the 1911 Act was to establish a new constitutional settlement that limited the period during which the Lords could delay the enactment of legislation first introduced to the Commons but which preserved the role of the Lords in the legislative processes. In our view it would be in conflict with the 1911 Act for it to be used as an instrument for abolishing the House of Lords. This would be so whether or not there was initially an attempt to use the 1911 Act process to amend the 1911 Act to provide an express power to abolish the Lords. We would view such an endeavour in the same way as an attempt to delete the prohibition on extending the life of Parliament. The preamble of the 1911 Act is inconsistent with the Attorney General's contention. The preamble indicates that the 1911 Act was to be a transitional provision pending further reform. It provides no support for an intention that the 1911 Act should be used, directly or indirectly, to enable more fundamental constitutional changes to be achieved than had been achieved already.

43. Thus, it does not necessarily follow that because there is compliance with the requirements in the 1911 Act, the result is a valid Act of Parliament. Following the reasoning in the previous paragraph, if, without amending the 1911 Act further, the Commons attempted to extend the life of Parliament in excess of five years without the consent of the Lords the attempt would be ineffective and, if necessary, the Court's jurisdiction that we are now exercising could be invoked. The Attorney General in fact recognises this because, while he contends this could be done, he accepts it would be necessary for the 1911 Act to be amended first to remove the express exception to extending the life of Parliament.

44. This concession recognises that there are differences between the traditional powers of Parliament when legislating, and its powers when legislating under the 1911 Act. With the consent of the Lords and Commons, Parliament could extend the life of Parliament for say two years without having to amend the 1911 Act. Indeed, it did so during the Second World War. (We deliberately confine the extension for a limited period because there could be different arguments if Parliament attempted to extend its life indefinitely).

45. Once it is accepted that the use to which the 1911 Act could be put is limited, the question arises as to the extent of the limitation. It is when we reach this stage that it becomes important to recognise that what could be suggested here is the power to make fundamental constitutional changes. If Parliament was intending to create such a power, surely it is right to expect that the power would be unambiguously stated in the legislation. This is not the case with s. 2 of the 1911 Act. Whether or not legislation enacted in reliance on the 1911 Act is properly described as delegated, the 1949 Act can nevertheless be said to be seeking to do that which was disapproved of by Van den Heaver JA in the South African Court of Appeal in the *Minister of the Interior v Harris* (1952) 4 SA 769 at 790, that is, (adapting his words), to perform an act of levitation by lifting itself above its own powers by its own boot straps. The result of the use of the 1911 Act was in form to produce an Act of Parliament as is contended by the Attorney General and Mr Pannick but, as we have already pointed out, that Act will not be valid if it is outside the scope of the 1911 Act.

46. Thus we do not, however, regard this as being an all or nothing situation. We do not believe that it will necessarily follow if we conclude that the 1949 Act is lawful legislation, that the 1911 Act can be used or amended, so as to produce results that will constitute a different constitutional settlement. On the Third Reading of the 1949 Bill, the Secretary of State for Home Department (Mr Ede) stated:

> "This Bill is a short and workmanlike measure to bring up to date an Act which, at the time of its passing, was fiercely resisted by the party now represented by right hon. and hon. Gentlemen opposite. They then proclaimed their definite intention, as soon as they got into office, to repeal it. Now they accept it as one of the pillars of the Constitution. Therefore, one does not have to argue anything other than the shortening of the time during which another place can delay the non-financial proposals which this House sends forward to them. We feel that the length of time allowed in this Bill of one year and two Sessions is adequate to ensure that proposals which may be the subject of controversy between the two Houses shall receive full and ample consideration before being carried into effect, even if another place should not be reconciled to them. (Parliamentary Debates 1947-48 Vol 445 at p 1018)."

This statement makes clear that the ambitions for the 1949 Bill were of a modest nature. It involved no more than a modification of the 1911 Act and we recognise that such a modification of the 1911 Act is a change of a different dimension from the dramatic changes that we have just been discussing.

47. Interestingly, apparently, according to Lord Donaldson's letter, that this was not a black and white situation was also the view of Sir William Wade. Unfortunately, we do not know Sir William's reasons for considering it possible for the 1949 Act to be valid while at the same time believing that it would not be possible to amend the 1911 Act as a precursor to extending the maximum duration of Parliament.

48. The fact that we do not know Sir William's reasons does not mean that we cannot produce a justification of our own. The justification would be the difference in scale that the changes to our constitutional arrangements involved in reducing a delaying power from two years to one, when compared with either enabling the life of Parliament to be extended beyond five years or abolishing the House of Lords. The latter changes are so fundamental, that they could only be enacted or expressly made possible by what is traditionally the Sovereign Parliament. That is to say by the triumvirate of the Monarch, the Lords and the Commons. As we will explain later in this area it is important to pay attention to the views expressed in Parliament itself. From the extracts from Hansard placed before us we detect no consensus for a view that the 1911 Act was intended to give the Commons directly or indirectly power to change fundamentally this country's constitutional arrangements.

Can powers granted by an enabling Act only be enlarged or modified by express words of authorisation?

49. Here the principle is admirably expressed by Professor O Hood Philips as "the general principle of logic and law that delegates (Queen and Commons) cannot enlarge the authority delegated to them." (Constitutional and Administrative Law, 8th Ed., 1987 at p 80) This approach was endorsed by Lord Donaldson when introducing the Parliament Acts (Amendment) Bill (HL Official Report, 19 January 2201 Col.139). Relying on this approach, Sir Sydney submits:

> "The answer, as a matter of principle, is that, when Parliament confers power to legislate (even a wide or plenary power), the act of enlarging that power is, *prima facie,* repugnant to the enabling Act. Where the legislative power is granted subject to specified conditions, the act of modifying those conditions undermines the conditionality of the power. The foregoing analysis is supported by the colonial and Dominion cases, which were cited below both by the Appellants and by the Attorney General."

50. The Appellants also rely on decisions of the Privy Council dealing with the situation where legislative powers have been given by the "Imperial Parliament" to the local legislature. In this context, the Appellants and the Attorney General each relied on a number of authorities relating to the constitutional powers of legislatures of former dominions or colonies. The Appellants submit that these authorities establish a principle that a legislature established under a constitutional instrument subordinate to

that of the Imperial Parliament at Westminster could not legislate to alter its own constitution without an express power to do so. The Sovereign and the House of Commons are to be seen for the purposes of the 1911 Act as a subordinate legislature to which this principle applies.

51. The Attorney General submits that there is no rule of construction that a power to legislate to alter a constitutional instrument has to be express. Of course there has to be a power, and such a power is, he submits, to be found in s.2(1) of the 1911 Act properly construed. He further submits that the rule of construction which emerges from the colonial and commonwealth cases is the exact opposite of that contended for by the Appellants. The rule is that courts should not read in any limitation to a legislative power other than what is expressly laid down in the instrument conferring that power.

52. Colonial legislatures were generally established either under an Act of the Imperial Parliament or by an Order in Council exercising the Royal Prerogative. The instrument establishing the legislature defined its legislative powers. These often included a "power to make laws for the peace, welfare and good government of the Colony in all cases whatsoever", subject to certain restrictions as to the manner of doing so. These particular words appeared in clause 2 of the Order in Council of 6 June 1859 establishing the legislature of the Colony of Queensland – see *McCawley v The King* [1920] AC 691 at 706. Lord Birkenhead LC, delivering the judgment of the Privy Council in *McCawley*, contrasted at page 704 controlled and uncontrolled constitutions, saying that:

> "… a constitution [is not] debarred from being reckoned as an uncontrolled constitution because it is not, like the British constitution, constituted by historic development, but finds its genesis in an originating document which may contain some conditions which cannot be altered except by the power which gave it birth. It is of the greatest importance to notice that where the constitution is uncontrolled the consequences of its freedom admit of no qualification whatever."

53. Lord Birkenhead gave an account at page 709 of the perceived difficulties which gave rise to the Colonial Laws Validity Act 1865. S.5 of this Act features in a number of cases to which we were referred. It provided:

> "Every colonial Legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish Courts of Judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative Legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers and procedure of such Legislature, provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony."

54. In *McCawley,* the issue was whether a Queensland statute authorising the Governor in Council to appoint a judge of the Court of Industrial Arbitration to hold office for seven years, was in fatal conflict with a provision of the 1859 Order in Council and a section of the Constitution Act 1867. The Privy Council held that it was not, since the legislature of Queensland had power to enact the Queensland statute both under s.5 of the 1865 Act and under clause 22 of the Order in Council. Clause 22 contained an express power to amend that provided:

> "The Legislature of the Colony of Queensland shall have full power and authority from time to time to make laws altering or repealing all or any of the provisions of this Order in Council in the same manner as any other laws for the good government of the colony except …".

This in turn was held to be within the powers conferred by s.7 of the Imperial Act 18 & 19 Vict c 54.

55. *The Bribery Commissioner v Ranasinghe* [1965] AC 172 was an appeal from the Supreme Court of Ceylon. S.29 of the Ceylon (Constitution) Order in Council 1946 empowered the Ceylon Parliament to make laws for the peace, order and good government of the island. S.29(4) gave Parliament the power to "amend or repeal any of the provisions of this Order"; but provided that no Bill for amendment or repeal should be presented for the Royal Assent unless it was endorsed with a certificate of the Speaker, which was to be conclusive for all purposes that the Bill had been passed by a two-thirds majority of the members of the House of Representatives. The appellant was convicted of a bribery offence before a tribunal created by a provision of the Bribery Amendment Act 1958, which conflicted with a provision of the Constitution. The 1958 Act was not endorsed with the requisite Speaker's certificate and was not shown to have been passed by a two-thirds majority. The Privy Council held that the orders made against the appellant were null and void, since the persons composing the tribunal had been appointed under an invalid statute.

56. Lord Pearce gave the judgment of the Board. He identified at page 196B the point which was the real substance of the appeal, asking:

> "When a sovereign Parliament has purported to enact a bill and it has received the Royal Assent, is it a valid Act in the course of whose passing there was a procedural defect, or is it an invalid Act which Parliament had no power to pass in that manner?"

57. Lord Pearce considered, explained and distinguished *McCawley's* case, saying at page 197F that passages, which he quoted, from *McCawley's* case:

> "… showed clearly that the Board in *McCawley's* case took the view, which commends itself to the Board in the present case, that a legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its power to make law. This restriction exists independently of the question whether the legislature is sovereign, as is the legislature of Ceylon, or whether the

> Constitution is "uncontrolled," as the board held the Constitution of Queensland to be. Such a Constitution can, indeed, be altered or amended by the legislature, if the regulating instrument so provides and if the terms of those provisions are complied with; and the alteration or amendment may include the change or abolition of these very provisions. But the proposition which is not acceptable is that a legislature, once established, has some inherent power derived from the mere fact of its establishment to make a valid law by the resolution of a bare majority which its own constituent instrument has said shall not be a valid law unless made by a different type of majority or by a different legislative process."

And Lord Pearce said at page 200A:

> "No question of sovereignty arises. A parliament does not cease to be sovereign whenever its component members fail to produce among them a requisite majority, e.g., when in the case of ordinary legislation the voting is evenly divided or when in the case of legislation to amend the Constitution there is only a bare majority if the Constitution requires something more. The minority are entitled under the Constitution of Ceylon to have no amendment of it which is not passed by a two-thirds majority. The limitation thus imposed on some lesser majority of members does not limit the sovereign power of Parliament itself which can always, whenever it chooses, pass the amendment with the requisite majority."

58. In *R v Burah* [1878] 3 App Case 889, the issue before the Privy Council was whether Act No. XXII of 1869 of the Indian Legislature was inconsistent with the Indian High Courts Act (24 & 25 Vict. c. 104) or with the Charter of the High Court, or whether it was within the legislative power of the Governor-General in Council. The Privy Council held that the 1869 Indian statute did not contravene the Indian High Courts Act nor the letters patent issued under it. In so holding, Lord Selborne, giving the judgment of the Board, said at page 904:

> "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament which has, and was intended to have, plenary powers of legislation, as large and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they were restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express

> condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to enquire further, or to enlarge constructively those conditions and restrictions."

59. *Taylor v Attorney General of Queensland* (1917) 23 CLR 457 is a decision of the High Court of Australia concerning the constitution of Queensland. The Queensland Parliamentary Bills Referendum Act of 1908 provided that, when a bill passed by the Legislative Assembly in two successive sessions had in the same two sessions been rejected by the Legislative Council, it might be submitted by referendum to the electors, and, if affirmed by them, should be presented to the Governor for His Majesty's assent. Upon receiving such assent, the Bill was to become an Act of Parliament in the same manner as if passed by both Houses of Parliament, and notwithstanding any law to the contrary. The High Court held that this was a valid and effective Act of Parliament by virtue of the power conferred upon the Legislature of Queensland by S.5 of the Colonial Laws Validity Act of 1865. It was further held that there was power to abolish the Legislative Council of Queensland by an Act passed by the Legislative Assembly and affirmed by the electors in accordance with the provisions of the 1908 Act.

60. Barton J noted, at page 469, that the Constitution Act of 1867 provided for all laws passed under it to be enacted "by Her Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly in Parliament assembled", and that the constitution did not recognise the making of laws by any other authority. He then said:

> "It is also true that in general the legislation of a body created by and acting under a written charter or constitution is valid only so far as it conforms to the authority conferred by that instrument of government, and that therefore attempted legislation, merely at variance with the charter or constitution, cannot be held an effective law on the ground that the authority conferred by that instrument includes a power to alter or repeal any part of it, if the legislation questioned has to be preceded by a good exercise of such power; that is, if the charter or constitution has not antecedently been so altered within the authority given by that document itself. … Normally, therefore, in the absence of such a provision as s.5 of the Imperial Act, I should have been prepared to hold that the [1908 Act], which, though it professed to be an amendment of the Constitution Act of 1867, was merely, in view of its provisions, an Act at variance with the constitution, not preceded by a valid extension of the constitutional power, was therefore itself, as it stood, invalid. But in the present case the Imperial provision seems to me to take away the application of the principle I have stated to legislation of the kind which it authorises."

The other four judges, Isaacs, Gavan Duffy, Rich and Powers JJ each held that the 1908 Act was validly enacted under power derived from s.5 of the 1865 Act.

61. In the present case, Maurice Kay LJ rejected Sir Sydney's submission that these and other authorities supported the proposition that, in the absence of an express power to amend the governing statute itself by the prescribed procedure, no such power exists. Maurice Kay LJ held that what s.2 of the 1911 Act permits is what it says it permits. One is driven back to the language of the section and of the Act. He held that s.2(1) is wide enough to embrace a Bill which amends s.2 itself. *Ranasinghe* concerned the Ceylon (Constitution) Order in Council 1946 which *contained* an express power, but it is not an authority *requiring* an express power. The whole line of authority was not strictly analogous. It deals with the relationship between the Westminster Parliament and the devolved legislatures of former colonies. In his judgment, there is no established principle applicable to this case which denies a power of amendment of the earlier statute in the absence of the express conferral of one specifically dealing with amendment. What is important is the language of the earlier statute. He did not doubt that s.2(1) of the 1911 Act is sufficient to permit amendment in the manner which was achieved by the 1949 Act. Collins J entirely agreed with Maurice Kay LJ's analysis of the dominion and colonial authorities.

62. As we have indicated, we regard this approach as being an over-simplification. It is also necessary to consider the nature of the amendment. The Attorney General supports Maurice Kay LJ's analysis. He submits, for instance, that *Ransinghe*, which he described as Sir Sydney's best case, was accepted by Sir Sydney as not establishing the principle for which Sir Sydney contends. For his part, Sir Sydney submits that the principle, although not established by the case, is assumed and correctly so. The Attorney General further submits that the passage from *R v Burah*, which we have quoted, is a clear injunction against reading in limitations which are not expressed; and that it flatly contradicts the submission that there is a general rule of law that a legislature cannot amend its own constitution without an *express* power to do so. Sir Sydney submits that the passage embraces the principle of delegated legislation that delegated powers are limited by and to the express powers so delegated.

63. Sir Sydney submits that, like the instruments regulating the legislative powers of the Ceylon and South African legislatures and those of the Australian states, the 1911 Act is a regulating instrument which imposes conditions of law making. But, unlike the former instruments, it contains no provision authorising amendment of those conditions. Accordingly, in the absence of such an authorising provision, any attempt to amend the conditions of law making, which it lays down, will be repugnant to the 1911 Act and invalid.

64. Sir Sydney submitted that there was no Commonwealth case in which a valid amendment to a constitution had been found to have occurred in the absence of express statutory words saying in terms that a legislative body had power to amend the constitution. The Attorney General submitted that this was not correct. He referred to *Clayton v Heffron* (1960) 105 CLR 214, a voluminous decision of the High Court of Australia. The case concerned the validity of a proposed Act introduced by the Legislative Assembly of the New South Wales legislature to amend the constitution of New South Wales by abolishing the Legislative Council of the legislature, if there was a vote in favour of that in a referendum. The proposed Act was to be passed under a procedure in s.5B of the New South Wales Constitution Act 1902–1956, whereby legislation could be enacted ultimately without the consent of

the Legislative Council. S.5B had been introduced into the New South Wales Constitution by an enactment of the New South Wales legislature under s.5 of the Constitution Act. This provided:

> "The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever."

The Act to abolish the Legislative Council was held to be valid.

65. The Attorney General submits that the judgments rest upon the construction of s.5 of the Constitution Act, not on s.5 of the Colonial Laws Validity Act 1865. He refers to the judgment of Menzies J at page 269 to 273. Thus the relevant constitutional instrument contained a general power to legislate, but no separate provision saying in distinct terms that the Legislature could legislate to amend the constitution itself. Sir Sydney submitted that, on the contrary, there was ultimately an express power to amend deriving from s.4 of the Constitution Statute (18 & 19 Vict c 54). He referred to the judgment of Dixon CJ, McTiernan, Taylor and Windeyer JJ at page 252 to the effect that the combined effect of s.4 of the Constitution Statute and s.1 of the Constitution Act was to confer upon the legislature of New South Wales a full constituent power. The authority thus conferred was that exercised in adopting s.5 of the Constitution Act 1902.

66. It is not, in our judgment, necessary to resolve this disagreement, since we accept the Attorney General's more general submission that, although in many instances the relevant legislation contained an express power to make amendments to the constitution, the authorities do not establish a principle that such constitutions may not be appropriately amended without such an express power.

67. So far as is material to the present appeal, we derive the following synthesis from the authorities to which we have referred. A sovereign legislature, uncontrolled by antecedent written constitutional instrument, may alter its own legislative powers and procedures by legislation duly enacted in accordance with its embedded procedures. The resulting amended constitution is controlled to the extent provided by the legislation. Thereafter, further constitutional alterations may be validly enacted under and by means of the altered powers and procedures. Such alterations may include alterations to the powers and procedures prescribed by the first legislation. This is, however, all subject to the proviso that the making of these subsequent alterations is within the power afforded by the first legislation properly understood, and provided that they are duly enacted in accordance with its procedures.

68. We agree with Maurice Kay LJ that the circumstances of the Commonwealth authorities are not strictly analogous to those of the present appeal, except to the extent that they uphold the validity of constitutional change by virtue of the very instrument from which the legislature enacting the change derives its own powers. But there is, in our judgment, no constitutional principle or principle of statutory construction which prevents a legislature from altering its own constitution by enacting alterations to the very instrument from which its powers derive by virtue of powers in that same instrument, if the powers, properly understood, extend that far. This is not performing an act of bootstrap levitation, provided the power exercised is

duly derived, directly or indirectly, from a sufficient original sovereign power and authority.

69. We would suggest that the critical question is that referred to by Lord Pearce in his opinion before the Judicial Committee in the *Bribery Commissioner v Ranasinghe* [1965] AC 172at 197-198, where he made it clear that a constitution can be altered or amended by the legislature "if the regulating instrument so provides and if the terms of those provisions are complied with: and the alteration or amendment may include the change or abolition of those very provisions". Whether this is so or not depends on the proper construction of the regulating legislation, here the 1911 Act. This is the subject of the Appellants' third ground to which we now turn.

On a proper construction of the 1911 Act, does it authorise the Commons to remove or attenuate the conditions on which its law-making power are granted?

70. Sir Sydney, the Attorney General and Mr Pannick advanced contextual arguments based on the precise wording of s.2(1). Sir Sydney refers to the fact that s.2(1) begins with the word "If" and that it clearly has a proviso. He is right in submitting that this demonstrates the intention of Parliament in 1911 that a Public Bill would only become an "Act of Parliament" if the provisions of s.2(1) were complied with. As against this, it is argued that s.2(1) refers to "any Public Bill" and specifies the Bills which are to be excluded, namely a Money Bill or a Bill containing a provision to extend the maximum duration of Parliament beyond 5 years. It is pointed out that an amending Bill could easily have been excluded but it is not. It is submitted that as there are specific exclusions, there should be no implicit exclusion of amending Bills. We regard the submission of Sir Sydney that this involves flying "in the face of the express wording of s.2(1)" as overstating the position. Insofar as the 1911 Act can be amended by the 1949 Act, then the requirements of s.2(1) have been changed. It is then the different requirements of s.2 which have to be complied with.

71. We do not detect anything in the language of s.2(1) which would prevent the amendment which the 1949 Act seeks to make. Ultimately the question is whether the relatively modest changes made to the 1911 Act by the 1949 Act fall outside the scope of the 1911 Act.

The significance of the Parliamentary context

72. Unlike the court below, we do not approach this case on the basis that it turns simply on statutory interpretation and on established principles as to how statutes should be interpreted. We have been referred to parliamentary material that gives a clear indication of how the House of Lords and the House of Commons viewed the effect of the 1911 Act, both at the time that it was passed, and at the time of passing the 1949 Act. The manner in which both Houses have acted, with the assent of the Monarch, from 1911 up to the present day, demonstrates a consistent approach to the nature of the change made to the constitution by the 1911 Act. We have concluded that this, of itself, is a most material factor in deciding whether the Hunting Act is a valid Act of Parliament.

The passing of the 1911 Act

73. We now propose to consider the circumstances in which the 1911 Act was enacted, including parliamentary material recorded in Hansard. What is the justification for so doing? If this case turned simply on the true construction of the 1911 Act, we should have to consider the effect of *Pepper v Hart* [1993] AC 593, and we propose to start by considering the implications of that case, in the light of subsequent jurisprudence.

74. Prior to *Pepper v Hart*, the courts refused to consider statements made in Parliament in the course of the passage of a Bill in order to elucidate its meaning and effect. This rule was relaxed in *Pepper v Hart*, a particularly hard case which, it has been suggested, led to bad law. At issue was the effect of an ambiguous provision in the Finance Act 1976. That issue had been expressly raised in debate on the Bill and the Minister had given a specific assurance in answer. In these circumstances the majority of the House ruled that it was permissible to have regard to the statement made by the Minister, as recorded in Hansard, in order to interpret the provision. Lord Browne-Wilkinson, who gave the leading speech, said at p 640:

> "...the exclusionary rule should be relaxed so as to permit reference to Parliamentary materials where (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied upon consists of one or more statements by a Minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect and (c) the statements relied upon are clear."

75. Members of the House of Lords have since, both judicially and extra- judicially, expressed doubts as to whether the decision in *Pepper v Hart* was well advised – see the observations of Lord Hoffmann in *Robinson v Secretary of State for Northern Ireland* [2002] UKHL 32 (at paragraphs 39 to 40) and the Hart Lecture given by Lord Steyn (2001) 21 Oxford Journal of Legal Studies 59. Certainly the application of *Pepper v Hart* has been strictly constrained: see *R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd* [2001] 2 AC 349. Sir Sydney submits that this last decision was directly in point, and precluded reference to Parliamentary material as an aid to interpreting the 1911 Act. In *Spath Holme*, Lord Bingham of Cornhill, Lord Hope of Craighead and Lord Hutton all agreed that it was not legitimate to have regard to a ministerial statement to elucidate not the meaning of a provision but the scope of a statutory power. Sir Sydney submitted that this was precisely the use that the Attorney General was seeking to make of the parliamentary material.

76. This appeal is concerned with much more than the scope of a statutory power. It is concerned with the extent of the restriction of the role of the House of Lords as one of the constituents of sovereign power affected by what was in reality a concordat and what was in form a statute. Each of the parties before us has urged that the effect of the 1911 Act is clear from its terms, yet each contends for a different result. We have accepted the Attorney General's submission that there was no express restriction on the subject matter of the statutes that could be passed under the 1911 Act other than those specified within brackets in s.2(1). We were, however, persuaded by Sir Sydney that it was at least strongly arguable that, the 1911 Act having conferred powers on

the Commons subject to express restrictions, it was implicit, as a matter of basic principle, that those powers should not be used to sweep away the express restrictions.

77. The respective arguments in respect of the true interpretation of the 1911 Act, would, in the absence of further assistance, have left us in doubt as to what Parliament intended in respect of its scope. Having regard to the unusual nature of the 1911 Act, this is not a question to be resolved on the basis of the wording of the Act alone, without considering the circumstances in which it was passed and what was said in the course of debating its provisions. Furthermore, as we have said and for reasons that we shall explain, it is relevant when considering the effect of the 1911 Act to consider not merely parliamentary material in relation to its enactment, but the subsequent understanding of Parliament as to the nature of the constitutional change effected by the 1911 Act.

78. The 1911 Act resolved a constitutional crisis. The Conservative party had a majority in the House of Lords, which seemed likely to persist forever. They were using this majority to defeat measures of social reform proposed by the elected members of the Commons, where the Liberals were dominant. In 1909 the Lords even rejected the Finance Bill based on the budget, which Lloyd George had presented to the Commons. Faced with this impasse the Government twice went to the country, putting restriction of the powers of the House of Lords at the forefront of their manifesto. In 1910, King George V agreed, at the request of Mr Asquith the Prime Minister that he would, if necessary, create 400 new Liberal peers in order to relieve the Government's impotence. It was against the background of this threat that the Bill was debated that was to become the 1911 Act.

79. Consideration of Hansard discloses beyond doubt the understanding of both the Lords and the Commons as to the extent of the constitutional change to which they were agreeing, albeit, so far as the Lords were concerned, under duress. The relevant Parliamentary material is far more cogent than a mere ministerial statement, however emphatic. In the Commons, the Bill was debated in Committee before the whole House. Many amendments proposing express restrictions on the scope of s.2 were tabled. All were defeated, with the exception of the conditions ultimately contained within brackets in that section. On 24 April 1911, Sir Philip Magnus moved an amendment to insert after the words "other than a money Bill" the words "or Bill for modifying this Act".

80. Sir Philip explained the effect of his amendment as follows (Hansard col 1471):

> "What I claim for my Amendment is that any change in this Bill shall also not become law without the consent of both Houses, and that having once passed this Bill it shall not be again altered unless the House of Lords give its consent. That is the essential feature of this Amendment – that the same condition shall hold good as regards the alteration or amendment or modification of this Bill as the Government recognise must hold good in order that the Bill may pass into law. In other words, the proposal is that the Constitution of this country cannot be again changed any more than it is being changed now without either the assent of both Houses of Parliament, or without an appeal to the country, so that the will

> of the people with regard to any alteration in this Bill may be made known."

81. Sir Philip went on to state that, without his amendment, it would be open to a Government to modify the provisions of the Bill, so that a shorter period might elapse between the passing of a Bill for the first time in the House of Commons and its receiving the Royal Assent. The Prime Minister, Mr Asquith, in explaining why the amendment was not acceptable to the Government said that its effect would be (col 1471):

> "We could not amend the procedure in Clause 2 of the Bill, however much experience might show it to be necessary, without resorting to the old forms of the Constitution, enabling the House of Lords to block our proposals."

82. Mr Balfour, the Leader of the Opposition, responded (col 1476):

> "When you are handing over all the powers to this Chamber over ordinary legislation we see the greatest objection to it, but we at all events know that no further invasion upon our Constitution can be made except under the provisions you are putting before us. Now it seems that that may be the fruitful parent of any number of further revolutions, each one of which fritters away what you call the safeguards. In these circumstances you are asking us to substitute the ancient foundations of the Constitution, foundations of moving sand, which any breath may sweep away.....Are we now, from henceforth going to hand over to a majority of the House, constituted as he tells us as a majority of this House so often is, not merely the ordinary legislation of the country, but the very shaping of the machinery by which legislation is to be carried into effect?"

83. Many other contributions to the debate were to like effect. We quote, by way of example, Mr Cave (col 1479):

> "Surely a Parliamentary bargain is worth nothing unless it can be enforced, and the effect of this bargain now proposed is that each of these safeguards may be swept away two years from now. You cannot enforce the safeguards. What then are your safeguards worth?"

84. No one who took part in the debate on the amendment questioned the basis on which it was advanced, and at the end of the debate the Prime Minister acknowledged the importance of the decision on the amendment. In conclusion he said (col 494)

> "... we think it right that we should not submit ourselves to what we should have to submit ourselves to if the Amendment were accepted, namely, the possibility of our not being able, whatever experience we may show, to amend in any particular this measure."

The amendment was defeated.

85. A similar debate took place in the House of Lords. On 29 June 1911 the Earl of Ancaster moved an amendment to omit the words "other than a Money Bill" and to replace them with "not being either a Money Bill or a Bill extending or modifying the provisions of this Act". He explained (Hansard col 1184)

> "The Amendment would have the effect of keeping out any amending Bill to lessen the suspensory period of two years".

He went on to comment (paragraph 1186) that, without the amendment:

> "I do not see that it would involve any great difficulty on the part of the Government of the day to alter the period of two years into one."

86. For the Government, Viscount Morley of Blackburn accepted the importance of the amendment, but indicated that it would not be acceptable to the Government because it would prevent the Commons from amending the terms of the Parliament Act should this be expedient. His speech led the Earl of Ancaster to comment, when stating that he did not intend to press his amendment to a division:

> "But the action of the Government and the admission of the noble Viscount, Lord Morley, have shown that it is possible for a Bill to be brought in reducing the two years' delay to one, and the period of three sessions to two, so that what we said at the last election about single-Chamber government is perfectly true."

Comments of other members of the House before the amendment was withdrawn indicated general acceptance that if the Bill was enacted as drafted, it would be open to the Government to use its provisions to reduce the limited powers that it gave to the House of Lords.

87. These two debates make it impossible to suggest that either House understood that the Parliament Act would be subject to the rigid restriction on the use of its powers, which Sir Sydney submits followed from its terms in the light of basic principle.

88. We have now dealt with the understanding of both Houses of Parliament as to the reach of the constitutional change effected by the 1911 Act. We turn to consider the understanding of the two Houses as to the effect of that Act between 1911 and the present day. Before doing so, however, we must explain why this is relevant.

89. Sir Sydney submits that the legislative history subsequent to the 1911 Act has no relevance. He accepts that many members of Parliament had assumed that the 1949 Act and the legislation passed under it were valid, but submits that the correctness of that assumption was a matter for the courts alone. He relies on the statement of Lord Sterndale MR in *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 2 KB 403 at 414, approved by Viscount Simonds in *Kirkness v John Hudson & Co Ltd* [1955] AC 697 at 711, that "subsequent legislation, if it proceeded on an erroneous construction of previous legislation, cannot alter the previous legislation". The latter

case demonstrated that, while subsequent legislation could resolve ambiguity in earlier legislation, it could only do so where the subject of the subsequent litigation was the same as the earlier Act.

90. We do not consider that these principles can be strictly applied in this case. What is in issue is a consensual constitutional change in the manner in which sovereign power is exercised. The nature of that change depends not simply on the words used in the legislation by which that change was brought about. It depends on general recognition of the nature of the change, as demonstrated particularly by those who brought about the change, but additionally by all affected by it. This is what Hart described as the 'rule of recognition' in Chapter 6 of his work on *The Concept of Law*. In short, it is vain to argue that, on its true construction, the 1911 Act provided for entrenched restrictions on the manner in which the powers granted by that Act should be exercised, if no one who was involved appreciated those restrictions at the time, and if all concerned have acted in disregard of such limitations in the lengthy period which has since elapsed.

91. The first use of the 1911 Act was to pass the Welsh Church Act 1914. The Parliament that passed this Act was the Parliament that enacted the 1911 Act itself. The effect of the Welsh Church Act was to disestablish the Welsh Church and to remove the Welsh bishops from the House of Lords. This was a significant constitutional change that, by virtue of the 1911 Act, the Commons were able to bring about without the assent of the House of Lords. Sir Sydney did not challenge the validity of this use of the 1911 Act, for it did not impact on the restrictions which he contended were entrenched by the 1911 Act. It nonetheless raises a question. If the 1911 Act could be used to effect a constitutional change in the composition of the House of Lords, how far could that Act be used to bring about constitutional change? The more far-reaching the legislative power granted by the 1911 Act, the more difficult to suggest that this power stopped short of amending the 1911 Act itself. The matter was not, however, put to the test until the 1949 Act was enacted. Prior to that, the only other Act passed pursuant to the 1911 Act was the Government of Ireland Act 1920 another important Act of constitutional reform which established a parliament for Ireland with legislative powers; so called 'Home Rule'.

92. Parliament's understanding of the effect of the 1911 Act was demonstrated by the use of its provisions to enact the 1949 Act. There was much debate in the Commons as to the nature of the constitutional changes proposed and whether it was right to make them, but it was generally accepted that the 1911 Act could be used to make those changes. The nearest to a challenge came in the following passage of the speech of a Conservative MP, Mr Quentin Hogg (Hansard 14 November 1949 col 1771):

> "I must record my view that under the Parliament Act 1911 it was never contemplated that that particular procedure would be employed for the purposes of amending that Act. On the contrary, the preamble makes it quite plain that the Act was contemplated as a temporary Measure, and when the question of reform came before the House again what would be introduced, according to the framers of that Measure, would not be some amendment of that Act, but a totally new Second Chamber altogether. The purpose of using the Parliament Act procedure for the purpose of

> amending the Parliament Act is wholly outside the purposes of those who framed it, and is in itself a constitutional outrage."

Mr Hogg was not, however, suggesting that it was impossible to use the 1911 Act to pass the 1949 Act, merely that it was outrageous to do so. Mr Hogg was supported in his observations by another member of his party, Captain Crookshank (col 1803). The position was the same in the House of Lords. The Bill was attacked on its merits and on the ground that there was no popular mandate for it. But it was throughout accepted that the Government was in a position to use the 1911 Act to pass the Bill despite the opposition of the Lords.

93. The Hunting Act is the fourth statute to be passed pursuant to the provisions of the 1911 Act, as amended by the 1949 Act. The other three are the War Crimes Act 1991, the European Parliamentary Elections Act 1999 and the Sexual Offences (Amendment) Act 2000.

94. In the first prosecution under the War Crimes Act 1991, *R v Serafinowicz*, a submission was made on behalf of the defendant that both the 1949 Act and the War Crimes Act were invalid. No record remains of the submission or of Potts J's ruling, which rejected it, but we have been informed that both were brief. The first trial did not reach a conclusion, but a second defendant has been prosecuted under the War Crimes Act, was convicted and sentenced to life imprisonment, and remains in prison today. The War Crimes Act was amended by both the Criminal Justice and Public Order Act 1994 (Sch 4, Part II, para 72) and the Criminal Procedure and Investigations Act 1996 (s.44(5)(m)). Each of these statutes was passed by both Houses and assented to by the Queen, so that all three constituents of sovereign power have recognised the validity of the War Crimes Act.

95. In June 1999, European Parliamentary elections were held under the European Parliamentary Elections Act and MEPs returned to the European Parliament on the strength of those elections. The validity of that Act was recognised by both Houses and the Queen when it was consolidated in the European Parliamentary Elections Act 2002.

96. Homosexual acts which were previously unlawful have no doubt been committed in reliance upon the Sexual Offences (Amendment) Act 2000 and prosecutions have also been successfully brought in respect of offences created by that Act.

97. These are cogent examples of the general recognition by Parliament, the Queen, the courts and the populace, that the 1949 Act was a proper exercise of sovereign legislative power and that the same is true of legislation enacted pursuant to the provisions of the 1949 Act. Sir William Wade, writing fifty years ago on *The Basis of Legal Sovereignty*, [1955] CLJ 172 at 196, commented:

> "...the seat of sovereign power is not to be discovered by looking at Acts of Parliament but by looking at the courts and discovering to whom they give their obedience. In the case of peaceful revolutions, as has been pointed out, the issue is obscured by legal camouflage: Acts of Parliament purport to transfer sovereign power and since sovereign power passes at

> the same time by universal consent, the transfer is ascribed to the Acts. But it has already been seen that this is a defective explanation, for it leaves alive the controversy about the possibility of a repeal. That controversy can be resolved only in one way, by recognising that sovereignty is a political fact for which no purely legal authority can be constituted even though an Act of Parliament is passed for that very purpose. "

The restrictions on the exercise of the powers of the House of Lords that the 1949 Act purported to make have been so widely recognised and relied upon that they are today a political fact.

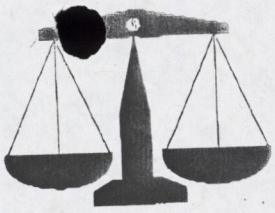
Conclusion

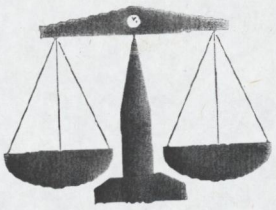
98. For the reasons we have given we have accepted that there was power to amend the 1911 Act to the extent of the amendment contained in the 1949 Act. We have not been prepared to go further than that. This is because, to an extent, we have been prepared to accept part of the argument that Sir Sydney advanced so eloquently. Once the 1911 Act had made the fundamental change of allowing the consent of the House of Lords to be dispensed with as long as the conditions in s.2(1) of the 1911 Act were complied with, the reduction of the period referred to in s.2(1) in its original form to those contained in the 1949 Act, was a relatively modest and straightforward amendment.

99. However, accepting a power of amendment of this nature exists is quite different to allowing the power of amendment to extend to making changes of a fundamentally different nature to the relationship between the House of Lords and the Commons from those which the 1911 Act had made. The 1949 Act left the relationship between the House of Lords and the House of Commons substantially the same as it was before the 1949 Act. It reduced the length of the period for which the House of Lords could delay legislation proposed by the Commons.

100. What, if any, further power of amending the 1911 Act that Act authorises should not be determined in advance of an attempt to make a more significant amendment than that contained in the 1949 Act. It is, however, obvious that on our approach, the greater the scale of the constitutional change proposed by any amendment, the more likely it is that it will fall outside the powers contained in the 1911 Act. Our decision is limited to indicating that if what is involved is properly described as a modification of the 1911 Act it is legally effective.

We dismiss the appeal.





THE ATTORNEY GENERAL' S CHAMBERS

Private Office to the Law Officers
The Rt Hon The Lord Goldsmith QC
Attorney General
&
The Rt Hon Harriet Harman QC MP
Solicitor General

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☐	David Howarth	Assistant Private Secretary & Parliamentary Clerk
☐	Karen Appleby	Assistant Private Secretary to Solicitor General
☐	Lynda Vaux	Diary Secretary

IMMEDIATE **ROUTINE**

TO: Jonathan Powell **TIME:** 5.20.

ORGANISATION: **DATE:**

FAX NO: 7839 9044. **PAGES:** (incl this page)

MESSAGE:

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NEWS RELEASE

16 February 2005

HUNTING ACT CHALLENGE

A spokesperson for the Attorney General said:

"It is not for the Attorney General to suspend an Act of Parliament and it was not the Attorney General who applied to the court to have it suspended. Only courts have the power to suspend an Act of Parliament; that was the reason for the application by the Countryside Alliance.

"The Hunting Act 2004 will come into force this Friday, 18 February. The Court of Appeal has, as always expected by the Government, upheld the validity of the Act and declined to overturn it. It has also declined to suspend the operation of the Act until the challenge is finally concluded.

"The Attorney General does not therefore propose to introduce a blanket policy of non-enforcement of the law. The Attorney will, however, consider with the DPP and police what approach to take in relation to such prosecutions, and will be holding a meeting in the near future for that purpose.

"Any further steps in relation to the legal challenge are at this stage hypothetical. It is for the House of Lords to decide whether or not to hear any appeal made by the Countryside Alliance. If it decides to do so, consideration will then be given to what implications that has for any pending prosecutions.

"Whether such a petition will be successful, whether the Countryside Alliance would apply for an injunction, whether that application would be granted and what timescale would apply to all these questions is unknown. The Government's position remains that it will robustly resist any further challenge to the validity of the Hunting Act on this or any ground."

ends

From: Michael Gillespie
Head of Public Order and Police
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☎ 7273 4249
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email: Michael.Gillespie@homeoffice.gsi.gov.uk

cc: Peter Storr
Catherine Webster
Jonathan Batt

16 February 2005

James Standing

HUNTING ACT IMPLEMENTATION: PLANS FOR THIS WEEKEND

You asked for a further note for No10 on police plans for dealing with potential law breaking over this weekend in connection with hunting with hounds. It is helpful to distinguish between Hunting Act offences and general Public Order Acts offences.

2. I have checked the latest position with ACC Nigel Yeo who leads for ACPO on public orders matters. You may find it useful to have this general note.

General Preparations

3.

a) ACPO have published:

- General guidance

- Strategic and tactical guidance

- A training pack (heavily based on CPS guidance on what is needed to prove the Hunting Act offences).

b) The Countryside Alliance have published a guide to hunting within the law (on the basis of their own legal advice, not police or CPS views).

4. You have copies of all of these and will attach them for No10.

5. The Police National Information Co-ordination Centre (PNICC) has been stood to and is prepared to report hunting related incidents on an exception basis until the Act comes into force and to handle intelligence more regularly thereafter. PNICC will provide an overview report by 7.00pm on Saturday which we will relay to Ministers. We will be monitoring any serious incidents on a continuing basis.

Hunting Act Offences

6. The best information is that the majority of those intending to take part in hunting type activity over the weekend intend to do so within the law.

7. If there is reason to believe that the law has been broken the general guidance is to gather evidence in the most appropriate way and proceed later by way of summons.

8. One or two hunts or hunters appear to have claimed they will set out to break the law. The tactics employed in these cases will depend on the circumstances and local judgement. But they are likely to be the same: pre-emptive arrest on the basis of a claim about what the hunt is going to do is not likely to be feasible.

Public Order Offences

9. This is likely to be the major issue if large numbers of hunters go out (whether for lawful or unlawful purpose) and are met with significant numbers of hunt opponents.

10. Police forces are well aware of the risks of disorder and will respond accordingly. There is some risk of over-stretch, but part of the purpose of PNICC is to co-ordinate the provision of mutual aid between forces where required.

MICHAEL GILLESPIE

Debbie Ailes

From: Standing James [James.Standing@homeoffice.gsi.gov.uk]
Sent: 16 February 2005 14:01
To: Debbie Ailes
Cc: Gillespie Michael; Webster Catherine; Kate Gross; 'mos.ruralaffairs@defra.gsi.gov.uk'; Batt Jonathan
Subject: Hunting Act

I understand that Mr Powell recently spoke with Hazel Blears concerning the implementation of the Hunting Act this weekend.

As requested, I enclose the following documents.

1. A brief note on police preparations for the weekend
2. ACPO guidelines - i) Guidance on the Act and ii) Tactical Considerations
3. Latest note from Civil Contingencies Secretariat
4. Copy of the Countryside Alliance guide "Hunting Handbook": this can be found at http://www.countryside-alliance.org/what_you_can_do..../spare/Download_your_copy_of_the_Hunting_Handbook_here/

Many thanks.

James Standing
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3rd Floor, Peel Building
2 Marsham Street
020 7035 8775

02072712432

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FAO: Jonathan Powell
From: Fiona McElroy, private secretary to Attorney General

Tel: 020 7271 2405

~~Three~~ four pages

Jonathan,
You spoke with the attorney earlier. Please note that this is a work in progress which the attorney has just sent through. Officials here are now looking at it to answer points raised.

Regards
Fiona

Interim Relief

1. The stated public position of the Government has been that it is for the Court to decide whether relief should be granted but that, in the exceptional circumstances of the case,[it does not oppose the grant of interim relief]that [it neither supports nor opposes a grant of interim relief.] There will be full argument on all issues given the involvement of the League. [*For consideration which of the formulations expresses the public statements which I do not have in front of me; what did Alun Michael say and what were the press reports?]*

Support or only one.

2. The Court may wish to know, and, if so, is entitled to be told, on what basis the Government has taken that view.

3. There are two questions:

    a. Whether there is jurisdiction to grant such relief

    b. Whether the Court in its discretion should do so.

4. On jurisdiction, the Government takes the view that, in the exceptional circumstances of the case, the Court has jurisdiction to grant interim relief having the effect of suspending the operation of the Act. This follows from:

    a. The Court's holding that it has jurisdiction to declare an Act passed pursuant to the Parliament Act 1911 invalid. This is discussed in the judgement at pp…

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b. If the Court has the power to make a final declaration that something purporting to be an Act of Parliament is not, then it must have the jurisdiction so to declare on an interim basis.

c. There is a close analogy between a claimed challenge under the Parliament Acts on a similar basis to that of a challenge to an Act of Parliament for violation of overriding EU law (see *Factortame*) where the House of Lords held that there was jurisdiction to grant interim relief.

d. It must be emphasised that this is exceptional and does not apply to any other Act where the Government would maintain that the Court does not have any jurisdiction to entertain an application for interim relief save in the EU context. However, if the court is considering the grant of interim relief, the Government would urge the court to emphasise the highly exceptional – indeed unique – circumstances of this case. There should be no endorsement of a general loosening of the test for the grant of interim relief where primary legislation is concerned.

5. On discretion, the Government is content to leave this issue to the Court to determine in the light of the submissions made. Its approach to this application has been influenced by the following considerations:

a. On the test for exercise of this exceptional jurisdiction, the statements in *Factortame* (especially at pages…) are in point.

b. Accordingly the test is one in which the balance of convenience is to be considered and the strength of the legal case that the law is invalid is a very important factor. However, in exceptional cases the strength of the legal case need not be a prima facie case but needs to be one where in the circumstances the strength of the legal case is sufficient to justify the relief being sought in the circumstances (see especially p…. "quote"). *This is the quote in the judgement to which I drew particular attention.*

c. The nature of the exceptional circumstances in the case will be for the applicants to demonstrate to the satisfaction of the court but [at the time of the public statement] the following considerations appeared relevant:

1. The Hunting Act 2004 is a major piece of legislation affecting the hitherto lawful pursuits of a large number of people in many parts of the country; the Act has raised very strong passions and beliefs both as to the legislation itself and as to the manner of its passing using the Parliament Acts [and statements of intended defiance of the provisions

7.

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of the Act; *[the position on intended defiance is weaker than it was before Christmas but please ensure that this statement is checked for accuracy]*

2. It is undesirable in principle to seek to enforce such a piece of legislation whilst there is well founded argument as to the validity of such legislation. How well founded that argument is is for the Court now to judge. However, it has been supported by reasoned argument and some distinguished commentators. The Court now has not accepted the full submissions of the Attorney General as to the ambit of the Parliament Act 1911 and has recognised in part the submissions of the Countryside Alliance.

3. In terms of the public interest it could be very damaging to the interests of the public and of communities if there were enforcement of the Act pending a final determination of its validity. There could be real strains on relations between the police and those significant sections of the community who are normally law abiding but who wish to hunt and who believe, perhaps strongly, that until the issue of the validity of the Hunting Act is finally resolved, they are not obliged to comply with what they regard as something which is not an Act of Parliament. The enforcement of the Act while its validity remains in doubt could undermine respect for the criminal law and the criminal process; that risk would be especially high if the Act was held on final appeal not to be valid;

4. As against that very real concern would need to be considered both the issue of non enforcement of legislation which has been held to be valid and the urgency otherwise of the ban coming into force immediately.

5. On the former point, the issue of principle is an important one which the Government considered carefully. But at the end of the day the issue is one of balancing the different factors at play in this exceptional case.

6. On the latter point it is hard for the Government to assert that there is an urgency in bringing the law into effect immediately given that the House of Commons voted that the law should not come into force until [July 2006]. The government supported this position. [The House of Lords itself at one stage voted also for a deferment ???- *give details.]* The reason that the delay intended by the Commons did not come into effect is because the House of

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Lords rejected the whole Bill and so that amendment fell. [*this point needs to be explained.*] Therefore, in the highly unusual situation in which we find ourselves , the government would not oppose a delay in the imposition of a ban.

7. In these wholly exceptional circumstances the Government did not consider it right to oppose the intended application whilst recognising that it must be for the Court to determine if such relief should be allowed.

ends

CONFIDENTIAL - PERSONAL

FAXED

10 DOWNING STREET
LONDON SW1A 2AA

From the Prime Minister's Chief of Staff

15 February 2005

Dear Fiona,

INTERIM RELIEF

Thank you for faxing me the draft. I have the following three comments:

Para 1: as the Attorney knows, the Prime Minister would ideally like this to support. If for any reason that is not possible it might be best to say "does not believe it would be right to oppose" as in para 7.

Para 5c (1): I think it would be best to drop the reference to statements of intended defiance here, not lease since the Countryside Alliance has advised people to stay within the law.

Paras 5c, 4 and 5: do we really need these paras at all?

JONATHAN POWELL

Fiona McElroy
Attorney-General's Office

CONFIDENTIAL - PERSONAL

From: Kate Gross
Date: 14 February 2005

JONATHAN POWELL

HUNTING

A note of what we expect to happen this week in terms of process, with contact names should you need them in my absence. Suggested press lines attached. I've also done a version of this note for the PM.

Court of Appeal judgement
We now expect this on Wednesday or Thursday (we should know for sure tomorrow morning – I've asked the AG's office to let you know). In the unlikely event of the Court finding in favour of the CA, the Parliament Act 1949 will be declared invalid, along with the Hunting Act and presumably all other legislation passed under the 1949 Act. It remains more likely that the Court will find in favour of the Government.

Interim relief
Assuming the case goes against them, the CA will then be able to apply for leave to appeal to the HoL, and for interim relief. Decisions on both are expected on the same day the Court of Appeal give their judgement. The Government will be represented by Clive Lewis, as the Attorney is out of the country and Philip Sales is appearing in another case in the House of Lords.

As you know from what the AG has said, the likelihood of the Court granting interim relief is directly linked to the judgement they give. There are two measures of the strength of this judgement: one is the terms in which it is given, and the other is whether it is unanimous, given that three judges preside in the Court of Appeal. If the court rules unanimously and firmly that the Parliament Act is a valid Act of Parliament, and leaves no room for legal uncertainty, this renders extremely unlikely the chances of interim relief being granted. However, if the court finds in favour of the Government by a majority only, and if the finding suggests that the law is uncertain on any point, it will be more arguable that there is legal uncertainty and the chance that interim relief will be granted will be increased.

Appeal to the HoL

Barring stitch-ups of the sort we discussed with the AG, the process is as follows. The CA may (and presumably will) apply immediately:

(a) for leave to appeal to the House of Lords, and

(b) for interim relief.

The Court of Appeal will consider the question of leave to appeal first. If they decline to grant leave to appeal, the CA cannot apply to the Court of Appeal for interim relief, as there will be no ground to request it, as the Court will have deemed the legal challenge exhausted. The CA can then petition the House of Lords direct to hear an appeal. If this happens we are in uncharted waters, but logically the question of interim relief would not be considered until the House of Lords has agreed to hear the case.

If the Court of Appeal do give leave to appeal to the House of Lords, they would then consider an application for interim relief. They might give leave to appeal but refuse interim relief. If they do so, the CA can then appeal to the House of Lords on the question of interim relief alone (in advance of the substantive hearing).

In terms of timing, the CA have one month in which to lodge a petition to the House of Lords. There is no set timetable for the HoL to consider the petition – it can take weeks, or even months, though in practice it is likely to reach a decision quite quickly. Assuming the petition is granted, the entire process in the HoL normally takes between six to twelve months. However, it can be abridged and expedited. Given that the new hunting season starts on August 1, it is possible that the HoL might try to give a decision before then.

Adjournment of prosecutions

The Court of Appeal judgment is key to whether the CPS will consider adjourning prosecutions on a case-by-case basis. As with the question of interim relief, if the Court of Appeal give a firm and unanimous judgement that the law is valid, there would be little reason for the Courts to adjourn prosecutions, even if the case were going to the HoL. However, if they leave an element of uncertainty then it is more likely that the CPS will apply to adjourn prosecutions whilst the case progresses through the HoL (the defendant in each case will also be entitled to apply for an adjournment, but the matter will still lie in the discretion of the individual court). Either way, the CPS are unlikely to be able to give a blanket statement of intent given that each decision would need to be made on a case-by-case basis.

Once the Court of Appeal judgment has been given, and depending on how robust it is, you might want to speak to the AG's office again to see whether the DPP is minded to make a statement on the (case-by-case) adjournment of prosecutions. Following this you might want to speak to JJ to explain our position. You should be aware that nothing in your correspondence with him indicated that this was anything other than a decision for the AG and DPP, dependent on the Court of Appeal judgement.

ECHR challenge

The CA have now launched their ECHR challenge. They are alleging a breach of Article 8 (right to privacy), Article 11 (freedom of Assembly), Article 1 of Protocol 1 (right to property), an Article 14 (discrimination). The AG does not think that their case is likely to succeed. As expected, the remedy that they have applied for is a certificate of incompatibility under the Human Rights Act, which would mean that even if they won their challenge, the Act itself would still be valid, and it would be up to Parliament to decide how to amend it to bring it into line with the judgement. Therefore the questions of interim relief, and of adjournment of prosecutions do not apply.

The AG is not going to represent the govt in this case (unless you feel strongly he should) but we will retain Philip Sales as Counsel and the AG's office will keep us closely in touch with proceedings.

Hunting Activity 18/19 February

A number of demonstrations are planned for the weekend. These are likely to be local demonstrations by hunts, rather than mass demonstrations in urban areas, though there may also be considerable hunt-saboteur activity. Such demonstrations will be policed under the standard public order policing arrangements. As you know, the CA and the Council of Hunting Associations have told their supporters to hunt 'within the law'. The police have no sense – at the moment – that there will be large-scale law-breaking by those seeking to make themselves hunting 'martyrs'. Hazel Blears will be monitoring the situation with the Police over the weekend.

I have read the CA's 'Hunting Handbook 2005'. The Police have also seen it. It is pretty sensible advice, and does not encourage any activity which could be seen as law-breaking. However it acknowledges that the law is complex and it is for the Courts to decide.

Lead officials
AG's office: Rebecca Hilsenrath
Tsol: Rebecca Lane
Home Office: Mike Gillespie (Head of Public Order Policing)

Kate Gross

KATE GROSS

Hunting [*to be deployed following Court of Appeal judgement in the Hunting case*]

Govt win

- This is the result we expected. The Countryside Alliance have indicated that they will apply for leave appeal to the House of Lords. They are entitled to do so and the Court remains the right place to resolve this question. We are confident that the House of Lords will again find in the Government's favour at that point.

Injunction

- The Government has already indicated that it is not minded to oppose any application by the Countryside Alliance for interim relief in relation to the challenge to the Hunting Act on the basis of the alleged invalidity of the Parliament Act 1949. The Government position on the question of interim relief – whenever it arises on this challenge – remains the same. If the case, and the process of appeal, have not been fully exhausted then we would not oppose interim relief.
- In the view of the Government, the unprecedented circumstances surrounding the Hunting Act create a significant risk for the duration of the current legal challenge of public uncertainty as to the status of the law, consequent strains in relations between the police and law abiding members of the rural communities and difficulties in law enforcement. And given that the Government proposed, and the House of Commons voted for, a delay in implementation of the ban until July 2006, it would be perverse for it now to seek to insist on it coming into force on 18 February, the date effectively chosen by the House of Lords.
- The question of interim relief applies only to the Parliament Act challenge, not to the ECHR challenge.

If the ban comes into force on 18/2

(i) Policing

- Policing is rightly an operational matter for Chief Constables. ACPO have issued guidance to forces suggesting that they treat hunting in line with the priorities outlined in the National Policing plan (i.e. as a low priority wildlife offence). Clearly if hunters are causing significant public order problems, the police will react appropriately. But in general we hope that hunters will act within the law as the Countryside Alliance and other hunting organisations have recommended, and that police will react proportionately and effectively.

Charles Clarke: *"Of course if you look at the priorities Police have to deal with, dealing with drugs, people trafficking crime, all kinds of issues I don't*

expect the fox hunting issue to be very high in the priorities of any particular, any particular Police Force."

(ii) Prosecutions

- The Crown Prosecution service is working with the police in order to issue charging guidance to forces. The CPS *may* also consider applying to adjourn prosecutions on a case-by-case basis if they are impacted on by the current challenge in the courts, though this will remain a decision for the courts. Anyone convicted of hunting with dogs after the ban comes into force will get a criminal record, as well as a fine of up to £5,000

ECHR challenge

- The Countryside Alliance has now launched its challenge to the Act alleging incompatibility with the European Convention on Human Rights. We are confident that the Bill is compatible with the Convention, and Alun Michael and Lord Whitty have signed the requisite statements under section 19 of the Human Rights Act 1998 to that effect.
- Two challenges to the Scottish ban on hunting with dogs on Human Rights grounds have been firmly rejected by the Scottish courts and any challenges to the Hunting Act in England and Wales are also expected to be unsuccessful.

General lines

- The Govt has searched hard for a compromise over hunting, which so clearly divides people. We have had 7 years of Parliamentary debate and now 10 votes in the last 10 years, in which MPs have voted overwhelmingly for a ban on hunting. Govt did all it could to persuade hunt supporters and opponents to reach agreement: but unfortunately neither side would compromise. So the will of the elected House of Commons prevailed.
- The Government did not force the Hunting Act through Parliament. The Parliament Acts were applied automatically by the Speaker of the House of Commons after the House of Lords failed to pass the measure down for the second time in 2 years
- Govt will not be paying compensation to hunters, though it will be offering support and advice, through Business Links, Job Centres and others, to help those affected to find alternative livelihoods and pastimes.

KEG
14/2/05

Pulled from Box by JP 18/2.

CONFIDENTIAL

From: Kate Gross
Date: 14 February 2005

PRIME MINISTER

cc: Jonathan Powell
Sally Morgan
Pat McFadden
David Hill

HUNTING – LEGAL CHALLENGES

Court of Appeal judgement

We expect the Court of Appeal to give their judgement on Wednesday or Thursday this week. In the unlikely event of the Court finding in favour of the CA, the Parliament Act 1949 will be declared invalid, along with the Hunting Act and presumably all other legislation passed under the 1949 Act. It remains more likely that the Court will find in favour of the Government.

Appeal to the HoL/interim relief

Assuming the case goes against them, the CA will then be able to apply for leave to appeal to the HoL, and for interim relief. Decisions on both leave to appeal and interim relief are likely to be given on the same day the Court of Appeal give judgement on the case itself.

The Court of Appeal will consider the question of leave to appeal first. If they decline to grant leave to appeal, the CA cannot apply to the Court of Appeal for interim relief, as there will be no ground to request it, as the Court will have deemed the legal challenge exhausted. The CA could then petition the House of Lords direct to hear an appeal. If this happens we are in uncharted waters, but logically the question of interim relief would not be considered until the House of Lords has agreed to hear the case.

If the Court of Appeal do give leave to appeal to the House of Lords, they would then consider an application for interim relief. They might give leave to appeal but refuse interim relief. If they do so, the CA can then appeal to the House of Lords on the question of interim relief alone (in advance of the substantive hearing).

As you know from what the AG has said, the likelihood of the Court granting interim relief is directly linked to the judgement they give. There are two measures of the strength of this judgement: one is the terms in which it is given,

and the other is whether it is unanimous, given that three judges preside in the Court of Appeal. If the court rules unanimously and firmly that the Parliament Act is a valid Act of Parliament, and leaves no room for legal uncertainty, this renders extremely unlikely the chances of interim relief being granted. However, if the court finds in favour of the Government by a majority only, and if the finding suggests that the law is uncertain on any point, it will be more arguable that there is legal uncertainty and the chance that interim relief will be granted will be increased.

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The CA have now launched their ECHR challenge. They are alleging a breach of Article 8 (right to privacy), Article 11 (freedom of Assembly), Article 1 of Protocol 1 (right to property), an Article 14 (discrimination). The AG does not think that their case is likely to succeed. As expected, the remedy that they have applied for is a certificate of incompatibility under the Human Rights Act, which would mean that even if they won their challenge, the Act itself would still be valid, and it would be up to Parliament to decide how to amend it to bring it into line with the judgement (as with Part IV of the ATCS). Therefore the questions of interim relief, and of adjournment of prosecutions do not apply.

Hunting Activity 18/19 February

A number of demonstrations are planned for the weekend. These are likely to be relatively small, local demonstrations by hunts, rather than mass demonstrations in urban areas, though there may also be some hunt-saboteur activity. These will be policed as any other demonstration under the standard public order policing arrangements. Hazel Blears will be monitoring the situation with the Police over the weekend.

Policing the ban

As you know, the CA and the Council of Hunting Associations have told their supporters to hunt 'within the law', and have produced a handbook for hunts to enable them to comply with what they are calling the "temporary ban". The police have no sense – at the moment – that there will be large-scale law-breaking by those seeking to make themselves hunting 'martyrs'. The Police intend to deal with hunting as a low priority 'wildlife' offence (as reported by the Observer yesterday, after they obtained copies of the ACPO guidance from Avon and Somerset police under FOI). Charles Clarke confirmed this approach, saying: "*Of course if you look at the priorities Police have to deal with, dealing with drugs, people trafficking, crime, all kinds of issues, I don't expect the fox*

hunting issue to be very high in the priorities of any particular, any particular Police Force."

Adjournment of prosecutions

You discussed the question of adjourning prosecutions with the AG last week. Since then, he has raised with the DPP, who is not willing to make a blanket statement on the adjournment of prosecutions. However, depending on the strength of the Court of Appeal judgement he might be willing to consider adjourning prosecutions on a case-by-case basis. Likewise individuals can apply to have their prosecutions adjourned. Either way, it is ultimately the Courts' decision. As with the question of interim relief, if the Court of Appeal give a firm and unanimous judgement that the law is valid, there would be little reason for the courts to adjourn prosecutions, even if the case were going to the HoL. However, if they leave an element of uncertainty then it is more likely that the courts will adjourn prosecutions whilst the case progresses through the HoL. Jonathan will pursue with the AG once the Court of Appeal judgment is available.

Kate Gross

KATE GROSS

Hunting [*to be deployed following Court of Appeal judgement in the Hunting case*]

Govt win

- This is the result we expected. The Countryside Alliance have indicated that they will apply for leave appeal to the House of Lords. They are entitled to do so and the Court remains the right place to resolve this question. We are confident that the House of Lords will again find in the Government's favour at that point.

Injunction

- The Government has already indicated that it is not minded to oppose any application by the Countryside Alliance for interim relief in relation to the challenge to the Hunting Act on the basis of the alleged invalidity of the Parliament Act 1949. The Government position on the question of interim relief – whenever it arises on this challenge – remains the same. If the case, and the process of appeal, have not been fully exhausted then we would not oppose interim relief.
- In the view of the Government, the unprecedented circumstances surrounding the Hunting Act create a significant risk for the duration of the current legal challenge of public uncertainty as to the status of the law, consequent strains in relations between the police and law abiding members of the rural communities and difficulties in law enforcement. And given that the Government proposed, and the House of Commons voted for, a delay in implementation of the ban until July 2006, it would be perverse for it now to seek to insist on it coming into force on 18 February, the date effectively chosen by the House of Lords.
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(i) Policing

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(ii) Prosecutions

- The Crown Prosecution service is working with the police in order to issue charging guidance to forces. The CPS *may* also consider applying to adjourn prosecutions on a case-by-case basis if they are impacted on by the current challenge in the courts, though this will remain a decision for the courts. Anyone convicted of hunting with dogs after the ban comes into force will get a criminal record, as well as a fine of up to £5,000

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- The Government did not force the Hunting Act through Parliament. The Parliament Acts were applied automatically by the Speaker of the House of Commons after the House of Lords failed to pass the measure down for the second time in 2 years
- Govt will not be paying compensation to hunters, though it will be offering support and advice, through Business Links, Job Centres and others, to help those affected to find alternative livelihoods and pastimes.

KEG
14/2/05

(9) Hunting - ECHR allege

Claim No. CO/

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

In the matter of a claim for judicial review

B E T W E E N :

THE QUEEN

(ON THE APPLICATION OF)

COUNTRYSIDE ALLIANCE AND OTHERS

Claimants

-and-

H.M.ATTORNEY GENERAL AND ANOTHER

Defendants

DETAILED GROUNDS OF CHALLENGE

Part 1 - Introduction

1.1 This case has been brought because fundamental rights under the European Convention on Human Rights have been transgressed by the criminalisation of hunting under the Hunting Act 2004 (the "Act"). In particular, the ban on hunting wild mammals with dogs violates Articles 8, 11, 14 and Article 1 Protocol 1. Moreover, the provisions of the Act as now enacted violate Articles 6 and 7 of the Convention.

1.2 The hunting of wild mammals with dogs has taken place in England and Wales for well over five hundred years. Throughout its history, hunting in its various forms has evolved to meet the tensions and changes within country life and rural society. Today, hunting is an integral part of, and is deeply rooted in, the fabric and culture of the countryside. Hunting - and those involved in hunting - is as varied as the communities of which it is part. It ranges from the large formal mounted hunt, with professional staff and many hundreds of followers through to one man who hunts with his dog alone or with friends. The diversity of the 2nd - 11th Claimants is representative of the diversity of the constituencies they represent. Hunting is economically and culturally significant, and is a recreational (and sporting) activity enjoyed by tens of thousands of people who take part in or follow hunting with dogs in all its forms.

1.3 The Act introduces a ban on all hunting with dogs of foxes, deer, hare and mink (the quarry species) and all other wild mammals save rats and rabbits.

1.4 The consequences of such a ban are grave for the freedom, lifestyle and jobs of many tens of thousands of individuals, and to the whole rural environment. Thus:

(i) The ban will result in several thousand job losses and profoundly damage the rural economy.

(ii) It will outlaw an activity that is an essential part of the social and recreational life of many thousands of rural dwellers, and that

binds together many rural communities spread throughout the country. It will effectively outlaw an important part of their lives and lifestyle.

(iii) It will deprive farmers of what many regard as the most effective means of wildlife management, both by way of culling and by way of dispersal. And it will result in farmers being forced to resort to less effective and less humane methods of controlling foxes, deer, hare and mink.

(iv) It is likely to result in the putting-down of thousands of dogs and many horses bred and trained for hunting. Many of those that remain will be rendered valueless, or significantly less valuable.

1.5 Given these consequences, and given that fundamental rights protected by the European Convention are violated by this ban, there is a heavy burden on the Government to justify this ban as necessary for a proper purpose, and consistent with the Convention values of tolerance, pluralism and respect for diversity.

1.6 But, in fact, the ban cannot be justified as necessary for a legitimate objective. Indeed, the Government itself argued against the need for a ban on fox hunting and in favour of a targeted and evidence-based system of regulation based on the twin tests of least suffering and utility. But the majority in the House of Commons overruled this

considered position. This very fact points to the absence of any "strong and pressing social need" to resort to the extreme measure of an outright ban.

1.7 Moreover, the objective of the ban is not clearly identified in the legislation itself as animal welfare. Nor, if animal welfare was the intended objective, can the measure be justified by reference to that objective, or as rationally connected to it. Neither the Burns Inquiry report nor the Portcullis House hearings before the Minister of State for Environment Food and Rural Affairs established that hunting with dogs involved greater suffering than the available alternatives which remain legal, such as shooting.[1] Indeed the reverse is the case. And it is the view of a substantial group of the members of the Royal College of Veterinary Surgeons that hunting with dogs remains the most effective and humane method of control of the four recognised quarry species.[2] If animal welfare is the sole justification for the measure then it is inconsistent with that objective and arbitrary and irrational to compel farmers to resort to less effective and humane methods of culling and dispersal.[3]

1.8 The necessary justification for the interference with the individual claimants' rights under Article 8, 11 and Article 1 Protocol 1 is therefore not made out.

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[1] There is limited protection under other statutes and regulations against certain acts of cruelty to certain mammals involving poisons, traps and snares which falls short of a total ban. The relevant law will be fully set out in the skeleton argument.

[2] See para 188 of Baroness Mallalieu's Statement.

[3] Subject to various primary and secondary legislation, it remains lawful under certain circumstances to shoot, poison, trap and snare certain wild mammals, such control falling short of a total ban.

The ban is neither a necessary nor proportionate interference with fundamental rights. Moreover it is discriminatory in a manner that violates Article 14.

1.9 The provisions of the Act are arbitrary, irrational and absurd in their selectivity, which further demonstrates the lack of any real necessity for them. Thus:

(i) The Act prohibits the hunting with dogs of foxes, mink and hares but permits the hunting of rabbits and rats with dogs. This demonstrates that the purpose is not to prevent cruelty to mammals from being hunted by dogs. The real purpose is to outlaw certain "totemic" activities on grounds of prejudice rather than principle.

(ii) The Act permits the use of dogs to flush out wild mammals for the purpose of shooting them, but the Department for Environment Food and Rural Affairs ("DEFRA") claims that it does not permit the pursuit of wild mammals by dogs to disperse them, even when the landowner has no desire to harm or kill them.

(iii) The Act permits the use of a dog below ground to hunt a fox to prevent damage to game birds or wild birds kept or preserved for the purpose of shooting - but prohibits using the same dog below the same ground hunting the same fox to prevent or reduce damage to livestock or chickens.

(iv) The Act contains numerous other anomalies more fully analysed in Appendix 1.

1.10 Finally, the Act is arbitrary, irrational and discriminatory in that it prohibits hunting wild mammals with dogs but leaves fishing, and the shooting of game and mammals untouched, though these activities can result in a far greater level of suffering to the target species. This again casts doubt on the legitimacy of the ban's objective. It demonstrates that there is, in fact, no pressing social need for the measure on the basis that to kill a wild mammal, bird or fish during a recreational or sporting activity is not tolerable in modern society.

1.11 In what follows the Claimants will deal in turn with:

(i) The provisions of the Act (Part 2).
(ii) The Claimants' individual circumstances and the general consequences of the ban for rural life (Part 3).
(iii) The Claimants' submissions as to the breaches of Convention law (Part 4).

Part 2 - The Legislation under Challenge - The Hunting Act

2.1 The legislative history of the Act is fully analysed in Part III of the witness statement of Baroness Mallalieu, to which the Court is respectfully referred. For present purposes it is sufficient to analyse the key provisions of the present Act and

make certain comments on the legitimacy of the Act's objectives and the rationality and proportionality of the particular ban it imposes.

Key Provisions of the Hunting Act

2.2 The relevant provisions speak for themselves. In summary the scheme of the legislation is as follows:-

(i) Section 1 makes it an offence for a person to hunt a wild mammal with a dog unless he can prove that the hunting is exempt as specified within Schedule 1.

(ii) Section 11(2) provides that "*hunting a wild mammal with a dog*" includes "*any case where (a) a person engages or participates in the pursuit of a wild mammal*" and "*(b) one or more dogs are employed in that pursuit.*" It is asserted by the Government that the Act does not require that the pursuit be for the purpose of harming or killing so that the mere act of chasing away is criminalized.[4]

(iii) Wild mammals such as foxes, hares, deer and mink are covered by the ban, but the hunting of other wild mammals namely rats and rabbits is exempt from the ban.

(iv) Section 3 creates a number of subsidiary offences. These include an offence where a person knowingly permits land belonging to him to be entered or used in the course of the commission of an offence under section 1.

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[4] But the Second Defendant's Department's early advice to the 10th Claimant was that 'chasing away' was not covered by the legislation - a position from which they later resiled.

(v) Section 5 prohibits hare coursing events and makes it an offence for various persons to participate in a hare coursing event; attend a hare coursing event; knowingly to facilitate a hare coursing event or to permit land which belongs to him to be used for the purpose of a hare coursing event. There is no statutory defence to an offence under section 5.

(vi) Section 6 provides that a person found guilty of an offence under the Act shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). If the fine is unpaid the offender is liable to imprisonment in default.

(vii) Sections 7, 8 and 9 confer wide-ranging powers on the police to stop and search persons, to arrest, and to seize and forfeit property in order to enforce the ban on hunting.

(viii) Section 2 and Schedule 1 create a series of activities to be known as "exempt hunting". DEFRA summarises them as ratting and rabbiting; stalking and flushing out with up to two dogs; and using a single dog under ground to flush out wild mammals, such as foxes, in order to protect birds kept for shooting.

Part 3 - The Claimants

1st Claimant - The Countryside Alliance

3.1 The Countryside Alliance ("the Alliance") has been campaigning on rural issues for many years and was incorporated as a company limited by guarantee on 30th September 2004. The company maintains a membership organisation with around 100,000 full ordinary members plus some 250,000 associate members through affiliated clubs and societies. It is a politically non-aligned group and acts in partnership and campaigns with many other rural groups which specialise in issues such as food and farming, tourism, country sports, services and amenities, land development, bio diversity and conservation, rural employment and enterprise.

2nd Claimant - Donald Summersgill

3.2 Donald Summersgill is the professional huntsman for the Devon and Somerset Stag Hounds which hunts on Exmoor. He is 39 years old and has been the huntsman since 1990. He has never worked outside the hunting industry and is not qualified for anything else. He has been hunting all his life. Virtually all the members of his family hunt and are dependent on hunting for their livelihoods. If hunting remains banned he will lose his home. He has a position in the rural community by reason of his employment. In short, his life and property rights revolve around the hunt and his professional activities. He considers hunting, but particularly stag hunting in Exmoor, to be part of the traditional way that people

in that area have lived their lives. He sees himself as part of a minority group who have a separately recognised culture that brings very substantial benefits to the local farming and rural community. The effect of the ban on his life and his career is set out in full in his witness statement in support.

3rd Claimant - Lesley Joan Drage

3.3 Lesley Drage runs a small livery yard business in Stow-on-the-Wold in Gloucestershire. The business is entirely reliant upon local foxhunts for its survival; she looks after 18 horses, all of which are used exclusively for hunting. The contractual arrangements with the owners are vested and, in the absence of the hunting ban, could be expected to endure for the long term. These contracts provide her business with a steady income. She employs 4 people who have the benefit of contracts of employment with her. Likewise, Ms Drage has the reciprocal benefit of those employment contracts. She also has the benefit of a long-term contractual arrangement with a local landowner who has granted her an informal lease over her business premises. Her business has goodwill and, in the absence of the hunting ban, could have been sold as a going concern. Diversification is not possible for her into any other type of equestrian activity as she cannot afford and has no access to borrow the necessary capital. She is part of hunting society, her job is her life. Like the 2nd Claimant (and like all those for whom hunting is a way of life) she is part of a minority group who have a separately recognised cultural identity, which is not found elsewhere in

suburban and urban England and Wales. The ban will devastate her life and her business and she will lose her home. Full details are set out in her witness statement in support.

4th Claimant - Roger George Richard Bigland

3.4 Roger Bigland is a professional terrierman. He has been employed by each of three foxhunts in the Cotswold area for the last 40 years. His current employer is the North Cotswold Foxhunt, for whom he has worked since 1990. If he loses his job he will probably, given his age and his lack of transferable skills, be unable to get another job. If he is lucky he may find some low paid unskilled or manual labour. He has been with his present employers for the last 14 years and has the benefit of employment protection and vested rights under his contract of employment. His job is his passion and provides him and his wife with their only social life. Full details are set out in his witness statement.

5th Claimant - Colin Richard Dayment

3.5 Colin Dayment is a self-employed farrier. His business is largely dependent upon hunting. His family have been in this business since 1904 and it was run by his father, his grandfather and his great grandfather before him. Mr Dayment is 52 and has been a farrier since he was 15 years old. He works alone and has no employees. 81% of his business is the shoeing of horses for local hunts. His business has been incorporated as Dayment & Son Ltd and he stands to lose the value of his 100% shareholding

should the ban proceed. There are 7 packs of fox/staghounds within 20 minutes drive of his home. He believes that his business will not survive if hunting is criminalized and will thereby be deprived of the goodwill of the business built up by the family over the past 100 years. He also hunts and is, like the 2nd Claimant, part of the same defined and self-defining Exmoor hunting community. His only social life revolves around the hunt. Full details of the impact of the ban on his life are set out in his witness statement in support.

6th Claimant - Kim Yvette Gooding

3.6 Kim Gooding works with her husband, they are full time, self-employed trainers of hare coursing greyhounds. Their property has been adapted solely for the requirements of the business. If the ban is implemented they will lose their livelihood and the value of the business, their property will be significantly devalued, and it is more likely than not that they will lose their home through a forced sale. Mrs Gooding will be deprived of her current and cherished lifestyle. Her social life and that of her family depends upon hare coursing and the activities that surround it. The family will have to start again in a different walk of life. Full details of the impact of the ban on her life are set out in her witness statement in support.

7th Claimant - Joseph Cowen

3.7 Joseph Cowen is a landowner and is a trustee and the Senior Master of the Fernie Foxhounds, a foxhunt in

Leicestershire. As a trustee and Master, the Fernie's properties, equipment, hounds, horses and contracts of employment with its staff are all vested in Mr Cowen. The Fernie hunts on his family land (of which he is a trustee) about 1 in every 3 days that it is out hunting. The family land has been managed specifically for the purposes of fox hunting and has thereby acquired a special amenity value that is threatened by the Act. The Fernie provides two important services to local landowners and farmers: control of the fox population and a fallen stock service. Mr Cowen and his family have a social life that revolves around the Fernie. The hunting ban will have a fundamental effect upon his family, their lifestyle, social life and that of the wider rural community. Full details are set out in his witness statement in support.

8th Claimant - William Rhys Kenneth Jones

3.8 Kenneth Jones is the Master of the Irfon and Towy Hunt and is a tenant sheep and cattle farmer in Mid Wales. The hunt goes over his land 3 or 4 times a season. The hunt hunts both on horseback and on foot as a gun pack. Generally when hunting, the hunt crosses the land of various different landowners during a day. However, at least twice a year as a gun pack and twice a year when mounted they hunt exclusively on the Llwyn Maddoc estate to protect pheasants from foxes. The ban will have a disastrous effect on his lifestyle, livelihood, social life and property rights. His grandfather founded the hunt in 1909 to protect his own and other

local farmers' stock as they were losing too many lambs to foxes. His grandfather remained Master of the hunt for the next 37 years. Since then, his family have been an integral part of the hunt. Mr Jones has been hunting since he was 5 years old; he has 3 children and a wife and they have always hunted together as a family. It is the central unifying force in their life. The hunt provides an invaluable pest control service and the hunt committee, of which Mr Jones is a member, employs a professional huntsman who would lose his job if the ban proceeds. The hunt provides the only social life for the whole community in what is a very rural and quiet area with limited social and recreational activities. Mr Jones feels passionately that the ban will unnecessarily degrade his own, his family and community life. He fears that without hunting there is even less reason for one of his own children to take over the family farm and that the ban will lead to further drift from the area of local young people. Full details are set out in his witness statement in support.

9th Claimant - Richard Frederick May

3.9 Richard May is the Master and owner of a beagle pack. His family has bought its own land (which he now owns) for the purpose of hunting and shooting. Every three weeks he hunts exclusively over this land with friends he invites to join him. The pack has been in the ownership of his family for 3 generations. It was founded by his grandfather in 1905. The dogs are used for hunting hares. When the ban is implemented he may be able keep at most 3 or 4 dogs and will have no option but to destroy the rest of the pack. They

are pack animals and are not suitable as domestic pets. A ban will mean that he will have to dismantle his kennels, remove wire fencing, concrete and drains at substantial cost to restore his land. Full details of the effect of the ban on Mr May's life and property rights are set out in his witness statement in support.

10th Claimant - Giles Rufus Joseph Bradshaw

3.10 Giles Bradshaw owns a small farm in Devon. He currently allows the Tiverton Staghounds, Tiverton Foxhounds and the Taw Vale Beagles to cross his land about 3 or 4 times a year. He also uses his 4 dogs as a method of pest control on his farm, particularly to chase deer out from an area of woodland in order to deter them from destroying his willow coppices. Mr Bradshaw is concerned that under the terms of the Hunting Act, he will be forced against his conscience, to shoot deer unnecessarily. Both as a farmer and a landowner he needs to be able to plan his conduct so that it is within the law. He does not consider that the Hunting Act is clear and easily understood and DEFRA have been unable to clarify it for him. Full details are set out in Mr Bradshaw's witness statement in support.

11th Claimant - Jason Edward Vickery

3.11 Jason Vickery is a tenant farmer in Dorset. He hunts with the South and West Wilts Foxhounds and is a member of its committee. Mr Vickery's social and family life revolves around hunting. He grew up in a hunting family and met his wife through hunting. He

also takes his young daughters out hunting with him and he has made most of his friends locally through the hunt. As a farmer, Mr Vickery relies on the hunt's fallen stock service, which is described more fully in the statement of Ann Mallalieu. He considers that the hunting ban will have a devastating effect on his life. Full details are set out in his witness statement in support.

The Evidence

3.12 The Claimants rely upon their witness statements that set out more fully how they will be affected by the ban on hunting wild mammals with dogs. They will rely on further statements setting out the effects of the prohibition on others like them, and on expert veterinary evidence.

3.13 In addition, the witness statement of Ann Mallalieu provides a comprehensive overview of the history and effects of this legislation. The Claimants will not repeat the material therein, save to summarise briefly the evidence of the effects of the legislation.

3.14 As Ann Mallalieu makes clear in Part VI, paragraph 94 of her statement there will be profound consequences of any ban. Thus:-

(i) Aspects of the rural economy, and thousands of individual livelihoods will be ruined.

(ii) The welfare of the horses and dogs currently used in hunting will be compromised, in many cases by unnecessarily terminating their lives.

(iii) The fallen stock service provided by the hunts will disappear.

(iv) There are many and various economic losses relating to land, property and vested interests under enforceable contracts.

(v) There will be, for no legitimate reason, an impact on the diversity, social and cultural life of the countryside of historic proportions.

(vi) The welfare of the various quarry species will be compromised and more foxes, hares, mink and deer will be killed and wounded, often in ways that cause greater suffering than hunting.

(vii) There will be a significant impact on conservation and biodiversity.

Part 4 - The Relief Sought and Breaches of Convention Rights

Relief Sought

4.1 The Claimants seek declarations that the ban on hunting contained in the Hunting Act is incompatible with Articles 8, 11, 14 and Article 1 of the 1st Protocol of the Convention. The Claimants further submit that the provisions of the Act are in significant respects so unclear in their scope as to violate Articles 7, and further violate Article 6 by operating on the basis of presumed cruelty. For these reasons the Claimants seek declarations of incompatibility pursuant to section 4 of the Human Rights Act 1998.

The Relevant Convention Rights

4.2 The Hunting Act engages and unjustifiably and disproportionately interferes with the Claimants' rights under Articles 8, 11, 14 and Article 1 of the 1st Protocol of the Convention. Certain of the provisions also violate the requirement of legal certainty guaranteed by Article 7. These will be dealt with in turn below.

Article 8

4.3 Article 8 provides:

" Right to respect for private and family life:-

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Why Article 8 is engaged

4.4 The concepts of "private life" and "home" are not capable of exhaustive definition.[5] However, the jurisprudence establishes that they apply in a number of recognised categories and identifies key themes in the light of which to determine the scope of those concepts in a particular case. The issue at this stage is whether there has been an interference with the private lives or home of any of the Claimants. It is submitted that Article 8 is engaged for the reasons set out below. It is also submitted, given the extent of the impact on the Claimants (involving in some cases the loss of livelihood and home; and involving profound effects on the lives of some communities), that it would be surprising if Article 8 was not engaged.

4.5 The Claimants, like all other citizens, have a right to develop and retain their own personal identity, the protection of which is the fundamental purpose behind the privacy rights protected by the Convention.[6] They have a right to be left alone, unmolested by unjustified or arbitrary State action.[7]

4.6 However, the Convention's protection of a person's private life goes beyond the individual. The private sphere extends to and embraces the right of the individual to take an active part in community

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[5] See ***Chappell v United Kingdom*** [1990] 12 EHRR 1, paras 26 and 51; ***Raninen v Finland*** [1997] 26 EHRR 563; ***Neimitz v Germany*** (1992) 16 EHRR 97, para 30.

[6] The article secures to an individual the right to develop and fulfil his personality. For an early statement by the commission of this principle see ***Bruggeman and Scheuten v Federal Republic of Germany [1977] 3 EHRR 244 at 252*** (paragraphs 55-56).

[7] The essential object of Article 8 is to protect the individual against arbitrary interference by public authorities in an individual's private and family life (see for example ***Belgian Linguistic Case (No.2) [1968] 1 EHRR 252 at 282*** (paragraph 7).

activity.[8] The scope of Article 8 is wide enough to protect the individual from interference of this nature for the following reasons:

(i) Article 8 protects the right of the individual to establish and to develop relationships without interference by the state.[9]

(ii) It extends to protect the social and community lifestyle of individuals.[10]

(iii) One of the objects of the Convention and of Article 8 is to safeguard cultural diversity.[11]

(iv) Article 8 even extends to protect the individual from interference in activities of a professional and business nature.[12]

(v) Finally, Article 8 protects the home of the citizen from unjustified interference by the state. In the case of the 7th, 8th, 9th, 10th and 11th Claimants, the hunting takes place over their own lands and estates.[13]

4.7 It is accordingly submitted that a ban on hunting, with all its serious effects, falls within

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[8] See paragraph 54 of ***PG & JH v United Kingdom***, Application 44787/98, 25th September 2001 at paragraph 56; ***Adams v Scottish Ministers, Adams v Lord Advocate; Adams v Advocate General for Scotland*** [2002] UKHRR 1189 28th May 2004, paragraph 65.

[9] ***Neimitz v Germany (1992) 16 EHRR 97***, para 30.

[10] ***G & E v Norway, 35 D & R 30; Chapman v UK 33 EHRR 18, Connors v UK 27 May 2004, App No 66746/01, Times Law Report 10 June 2004***

[11] ***Smith v UK App No. 25154 / 94.***

[12] See FN10.

[13] For further examples see the witness statements of Anthony Gillam, the owner of a farm. He hosts hare coursing events that take place entirely on his own land. He has a share in a dog that takes part. He has managed the land so as to preserve a hare population for coursing by making use of the "set aside" regime. This has not necessarily been the most profitable possible use of the land.

established and recognised categories under Article 8.

4.8 Alternatively, it is submitted that, even if not within a specific category already recognised, the position of these Claimants should be recognised as within the concepts of private life and/or home, as being within the underlying rationales underpinning Article 8. The ambit of that private life which is protected by Article 8 should be given a broad interpretation since the consequence of the engagement of Article 8 is simply to require the State to justify an interference with an aspect of personal and community lifestyle that has hitherto been permitted by the law. And that broad interpretative approach is consistent with a core and well recognised Convention value: the promotion of tolerance and pluralism, and the protection of social diversity and the rights of minorities.

4.9 Specifically, the following submissions are made in relation to these Claimants:-

(i) The 2nd and 4th Claimants will lose their jobs. The 3rd, 5th and 6th Claimants will lose their businesses. The 2nd and 3rd Claimants in all probability will lose their homes.

(ii) The 2nd, 7th, 8th and 9th Claimants will have to destroy much loved animals, namely dogs and horses.

(iii) For the 2nd, 4th to 9th, and 11th Claimants, hunting with dogs is more than a mere pastime or hobby. It is an integral part of their

individual identity and their family, community and social life. As such, it is an activity protected under Article 8.

(iv) The 2nd, 6th, 7th, 8th and 11th Claimants' family relationships and interaction have been substantially shaped and are (particularly in adult life) largely dependent upon the shared interest in hunting with dogs. In the case of the 2nd and 7th Claimants without the activity they would see their families far less frequently. The activity now banned has bound them together as a unit and has been and remains essential to the development and maintenance of those relationships.

(v) In these circumstances, it is submitted that the protection of "private life" in Article 8 extends to protect from unjustified interference a recreational activity that is strongly identified with the ethos of the local community, and in which individuals participate for social and recreational purposes, either on their own land, or on the land of others by invitation of the owners. A particularly important aspect of hunting is that it enables people to develop socially and in personal terms by having the experience of mixing in a wide social group, comprising wholly different strata of society.

(vi) The submission is that the Claimants' rural lifestyle that has developed from hunting is protected by the broad notion of private life as set out above. The ten individual Claimants are merely representative individuals of many thousands of other people in the

countryside whose interests are represented by the 1st Claimant.

(vii) Moreover, the evidence establishes that in most cases of hare coursing, and in some cases of fox, stag, hare and mink hunting, the activity takes place exclusively on one person's land.

4.10 In the case of Adams[14] the Scottish Inner House rejected the claim that Article 8 was engaged by the Scottish ban on hunting. Their reasoning was that "*fox hunting has no sufficient characteristics that would bring it within the context of private life*" because it took place in public and because it was a sport and "*public spectacle*" (see paragraph 65). This ignores the effects on jobs, the possible loss of homes by hunt staff and others, and the destruction of much loved animals. In addition, this analysis confuses the concept of privacy in domestic law with the wider right guaranteed by Article 8. For the Article 8 right extends to protect an individual's interaction with the outside world, the distinctive lifestyle of the community, and those recreational activities which go to shape and define the personalities and family life of the participants. For the purposes of Article 8, public and private interact and are not mutually exclusive.

4.11 Article 8 rights are therefore engaged and violated by the prohibition on hunting under the Hunting Act.

Interference is not justified under Article 8(2)

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[14] ***Adams v Scottish Ministers, Adams v Lord Advocate; Adams v Advocate General for Scotland [2002] UK HRR 1189.***

4.12 Once it is established that the ban on hunting interferes with Article 8 rights that interference must be justified.

4.13 For the interference to be justified, it is necessary that it constitutes a lawful (in the sense of non-arbitrary) interference with the Claimants' Article 8 rights. In addition it is necessary that:

(i) It pursues a legitimate objective recognised in Article 8(2);

(ii) The interference is "necessary" in a democratic society, in the sense that it serves a "strong and pressing social need", and no less restrictive alternative is available; and

(iii) The interference is proportionate given its effect on the rights of the Claimants and the fact that it is to be enforced by criminal sanctions. The Claimants here rely on the analysis of Lord Bingham in Daly v Home Secretary (2001) 2 AC 532 at p 545G-546B and of the European Court in Smith & Grady v United Kingdom (1999) 29 EHRR 492.

4.14 The Claimants submit that the legislation satisfies none of these tests.

Lawfulness

4.15 As to lawfulness, it is accepted that, if the "Parliament Act" challenge[15] fails, there will be a valid enactment outlawing hunting with dogs. However, the concept of "lawfulness" in the Convention[16] extends beyond the existence of an ascertainable legal provision enacted by the legislature. That enactment must itself be non-arbitrary and sufficiently clear in its extent and application to warrant the description "law", to render the interference "in accordance with law".[17] It is submitted that the Hunting Act does not satisfy these requirements. It is not a law rationally based on the prevention of cruelty to animals; it is discriminatory in the activities it prohibits; and it lacks any logical coherence in those activities it allows or leaves untouched. In addition the scope of the prohibition remains unclear in significant respects.

Legitimate Objective

4.16 The interference must be for one of the specified legitimate aims enumerated in Article 8(2) in order to comply with Article 8. And yet the legislation itself fails to identify, or manifest, any such legitimate objective.

4.17 If, and insofar as any objective has been identified it appears to be "the protection of morals." That is on the basis either that it is "immoral" to "enjoy"

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[15] ***R (on the application of Jackson and others) -v- H.M. Attorney General,*** Claim No. CO/5791/2004; the claimants in that case seek a declaration that the Parliament Act 1949 is invalid and hence the Act is invalid.

[16] See also the requirements of Article 7.

[17] ***Ong Ah Chuan v Public Prosecutor [1981] AC 648; Sunday Times v United Kingdom (1979) 2EHRR 245*** at para 49.

or make a sport of the participation in any form of hunting however necessary, or simply on the basis that hunting causes unnecessary suffering to the quarry. And yet neither of these purposes has been identified by the legislature in passing the Act.

4.18 As to the first possible rationale it is submitted that this is not of itself a legitimate objective.[18] In other words it is not a legitimate objective for the imposition of criminal penalties by the State that the legislature regards a particular form of activity as immoral without suggesting that it is in any way psychologically damaging to the participants or others, or establishing that it involves any unnecessary suffering for the animals hunted.

4.19 The Claimants turn next to the second supposed legitimate objective. If, and insofar as that objective is said to be the prevention of unnecessary suffering to animals, the Claimants make two assertions:

(i) Firstly, no clear case was advanced by the sponsors of this legislation that this was indeed their purpose. There is no identity here between the purpose of the State in the sense of the executive government and State in the sense of the legislature - since the Government itself was in favour of the regulation, and not the prohibition, of hunting.

(ii) Secondly, there is no objective evidence to support the conclusion that hunting the quarry

[18] ***See Norris v Ireland 13 EHRR 186.***

species with dogs exposes them to greater suffering when compared with other forms of control, and there is no dispute that some form of such control of their numbers is necessary. The Claimants here rely on the totality of the evidence submitted in support of this claim. In particular, the Burns Inquiry report concluded that none of the methods of control currently available were without difficulty from an animal welfare perspective and that banning it would not further the welfare of the fox.

4.20 If the Defendants cannot identify a legitimate aim or objective recognised by Article 8(2) then the interference is simply lacking in any justification recognised under Article 8(2). In those circumstances the further question never arises as to whether the interference is necessary and proportionate and represents a fair balance between the competing interests engaged. But, in any event, the Claimants submit that even if a legitimate objective recognised by Article 8(2) is established the interference with Article 8 rights involved in the prohibition on hunting is neither necessary nor proportionate.

4.21 Further, or in the alternative, the ban on hunting is not "rationally related" to the legitimate objective of preventing unnecessary suffering to animals. Here the Claimants adopt the test laid down in the case of de Freitas[19] that legislation which interferes with human rights must not only have a legitimate

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[19] ***De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Land and Housing [1999] 1 AC 69.***

objective, but also be rationally related to that legitimate objective. A ban on hunting with dogs which leaves the quarry species exposed to other forms of control which are recognised as being capable of resulting in greater suffering, such as shooting with a shotgun[20] cannot be rationally related to the objective of preventing unnecessary suffering to foxes and other wild mammals.[21]

Necessary to serve a pressing social need

4.22 The Claimants turn next to the question of whether such an interference is "necessary in a democratic society" for a legitimate objective. Here it is submitted that the appropriate test is that of whether the prohibition of hunting wild mammals with dogs is "necessary to serve a pressing social need", particularly when taking account of the need for tolerance and pluralism in any democratic society bound by the Convention. On the authorities, it is for the Government to make out a case of such necessity. It is submitted that no such necessity has been made out. Thus:

(i) If the purpose is indeed the prevention of unnecessary suffering then the simple regulation of those who hunt with dogs so as to prevent unnecessary suffering, is a sufficient interference to achieve that aim. In other words, there is a less restrictive alternative form of interference to achieve the same

[20] Subject to the relevant statutory control, poisoning, snaring, and trapping.

[21] See the reports of Scott Henderson, Burns, and the summary of the Portcullis House hearings.

objective. Moreover it is simply not rational or justifiable to criminalise the hunting of some wild mammals with dogs because it allegedly exposes them to unnecessary suffering, whilst leaving as legal the alternative forms of control such as shooting with a shotgun[22] which can involve a significantly greater, or certainly equal, level of suffering.

(ii) If the purpose is simply to outlaw a minority from taking pleasure in hunting, on the basis that the legislative majority consider the enjoyment of such a pastime is "immoral", irrespective of whether it does expose foxes and other mammals to unnecessary suffering, then that objective does not serve a "pressing social need" at all. It simply limits the freedom of a significant minority in order to satisfy the prejudices of the legislative majority.

Proportionality of the Ban

4.23 The Claimants turn finally to the broader proportionality test. Here they submit as follows:

(i) It is for the Government to establish that the total ban on hunting with dogs is necessary to serve a legitimate objective, which can only be the prevention of unnecessary suffering to animals. Given the serious consequences of a ban which

[22] To repeat, poisoning, trapping and snaring are, although subject to some control, an available and lawful alternative.

criminalises otherwise lawful activity, such a case must be made out on the basis of objective scientific evidence and take full account of the relative suffering caused by the alternatives that remain lawful. It is disproportionate to base so serious a ban on the mere opinion of the majority of individual legislators that a ban is necessary to protect the target animal (be they foxes or other wild mammals) from unnecessary suffering.

(ii) Even then, it is necessary to demonstrate why there is a pressing social need to prohibit one activity when others, which can involve greater degrees of suffering to animals, are still tolerated.

(iii) It is further necessary to show that the objective of preventing unnecessary suffering to the quarry species could not be achieved by a less restrictive form of interference, and in particular by regulation of the activity of hunting with dogs.

(iv) Finally, it is submitted that, given the considerable impact of the ban on the rights of a very large minority which engages in hunting as a legitimate activity and the gravity of the effects of criminalization, any such marginal benefit to particular mammals is a wholly disproportionate benefit to offset the scale and consequences of such an interference with the ways of life and community activities of so significant a number of the rural population.

4.24 The Claimants further submit that the irrational and arbitrary nature of the ban, both by virtue of what it prohibits and by virtue of what it continues to permit demonstrates that it is neither necessary nor proportionate. It is for the Government to show that the ban is "rationally connected to a legitimate legislative objective" and that "the means used to impair the right or freedom are no more than are necessary to accomplish the objective."[23] But:-

(i) The fact that regulation targeted at reducing unnecessary suffering was recognised by the Government to be a more effective means of promoting animal welfare demonstrates the lack of necessity for an outright ban in respect of the hunting of the quarry species.

(ii) The fact that other forms of control of wild mammals which can involve a greater degree of suffering have been left untouched demonstrates the lack of necessity of this ban and fundamentally undermines any claim that it is proportionate. In other words it is demonstrable that if animal welfare is the sole objective of the legislation the ban does not consistently promote the very objective that is invoked as its justification.

(iii) The fact that the hunting with dogs of other wild mammals such as rabbits remains lawful indicates that the ban is so selective as to fail genuinely to promote any objective of preventing the unnecessary suffering of wild mammals.[24]

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[23] ***de Freitas [1999] 1 AC page 69 at 80.***

[24] ***de Freitas [1999] 1 AC page 69 at 80; A(FC) & Other v Secretary of State for the Home Department [2004] UKHL56.***

(iv) The imposition of a ban on hunting the quarry species with dogs, whilst fishing and shooting are not even regulated by legislation, is discriminatory. And the very fact of such discrimination demonstrates the lack of necessity and proportionality in the ban itself.[25]

4.25 The Claimants emphasise that in any properly functioning democratic society "pluralism, tolerance and broadmindedness" must be prized and protected unless the State can establish the clearest social necessity to curtail an otherwise lawful activity.[26]

4.26 The Claimants recognise that the Courts owe some deference to the right of Parliament to legislate in discretionary areas of judgment involving difficult issues of morals and social policy. But there are limits to that duty of deference in circumstances where fundamental rights are interfered with in a disproportionate, incoherent or arbitrary manner.[27]

4.27 These rights reflect every citizen's democratic rights and fundamental liberties and are a foundation of liberal democratic society.[28] Therefore it is respectfully submitted that the Court, in its

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[25] See Lord Bingham in ***A(FC)*** at paras 43-44.

[26] The term "necessary" in Article 8 and 11 does not have the flexibility of expressions such as "useful" or "desirable". In addition, pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (see the ***Young, James and Webster v. the United Kingdom*** judgment of 13 August 1981, Series A no. 44, p. 25, § 63); ***Chassagnou and Others. v. France; Handyside v UK (1 EHRR 737)***

[27] See Lord Bingham in ***A(FC)*** at paras 41-42.

[28] ***Rassemblement v Switzerland (1979) 17 DR 93.***

function as the guardian of such constitutional and fundamental rights, should require the Defendants fully to justify, by reference to detailed evidence and fact, the decision taken by Parliament to enact this legislation.[29]

4.28 4.28 It is not sufficient to leave the matter as one that can be determined purely by the emotional or moral instincts of the legislative majority. There is a need for legislation of this sort with consequences of this magnitude to be rationally justified on the basis of evidence that clearly demonstrates both a pressing need for the ban, and the inadequacy of any measure short of a ban. In particular:-

(i) The legislature cannot simply base judgments about a measure with such extreme effects on purely emotional reactions that on analysis cannot be rationally justified.

(ii) Any rational justification of the case based on cruelty must necessarily involve a comparison with other methods which remain lawful.

(iii) Therefore the Court necessarily has to consider both the undisputed evidence that it is necessary to control the relevant quarry species (such as foxes, deer and mink) by killing them and the clear evidence that other methods of killing them which will remain lawful can involve more suffering.

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[29] ***See International transport Roth GmbH v Secretary of State Home Department [2003] QB 728*** at paragraph 27 and ***A(FC)* and others** Lord Bingham at paras 41-43.

Article 11

4.29 Article 11 provides that:

"Freedom of assembly and association:-

1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

Engagement

4.30 The 2nd, 4th to 9th, and 11th Claimants submit that the activity of hunting with dogs engages their right to associate and to assemble for a common purpose. They submit that their right to associate and to assemble in order to hunt reflects a fundamental liberty and democratic right which, like the right to protection of private life from arbitrary interference from the State, is a foundation of liberal democratic society.[30]

4.31 The said Claimants submit:[31]

i. That the Article protects their freedom to take part in a communal activity which was formed to create a collective entity or "association" for the furtherance of the common interests of the members of the group, a right which should be practical and effective not theoretical or illusory.[32]

ii. That the most important aspect of the right to freedom of association is that citizens should be able to create a legal entity in order to act collectively in a field of mutual interest. Without this, the right would have no practical meaning and would be neutralised if the aim or purpose of the association or assembly was removed.[33]

iii. That English and Strasbourg case law has developed a concept that the right to associate

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[30] ***Rassemblement v Switzerland (1979) 17 DR 93.***

[31] See ***A(FC)*** Lord Bingham at paragraphs 41-42.

[32] ***Young, James & Webster v UK (1981) 4 EHRR 38*** at para 56 and see ***Airey v Ireland (1979) 2 EHRR 305*** at para 24.

[33] ***Gorzelik & others v. Poland (Application no. 44158/98 - 20 December 2001).***

is for the purpose of pursuing a particular aim.[34]

iv. Whilst the assembly and association involves social interaction, the original and still dominant purpose of hunting was, and remains, the deliberate setting up and maintenance of an organisational structure to control pests and to protect livestock. In a formal hunt, the actual "hunting" is carried out by dogs under the control of the huntsman and his staff and not by the mounted and foot followers.[35]

v. That the Article protects the right "for the inhabitants of a region in a country to form associations in order to promote the region's special characteristics for historical as well as economic reasons."[36] The Claimants submit (in their specific cases and generally) that the rural community formed hunting associations for utilitarian purposes and wish to continue to assemble and associate for the same functional reasons but equally to protect their cultural and traditional heritage.[37]

vi. That a democratic society must tolerate and even protect and support according to the principles of international law the existence of minorities and different cultures in a country.

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[34] It has been said in ***Chassagnou v France [1999] 29 EHRR 615***:"Moreover, an individual does not enjoy the right to freedom of association if in reality the freedom of action or choice which remains available to him is either non-existent or so reduced as to be of no practical value" (see the previously cited Young, James and Webster judgment, p. 54, para 56).

[35] See ***McFeeley v UK (1980) 20 DR 44*** at para 14: " … concerned with the right to form or be affiliated with a group or organisation pursuing particular aims."

[36] ***Sidiropoulos v Greece 27 EHRR 633*** para 44 page 662.

[37] ditto

vii. That the freedom to associate also includes the freedom not to associate. The Article 11 right to join or not join is not related only to the fact of association or assembly but the purpose for which one is joining or being forced to join.[38]

4.32 Further, the Claimants submit that there is a close link between privacy rights as protected by Article 8 and the right to freedom of assembly and association as protected by Article 11. In relation to the activity of hunting with dogs, the Convention provides a seamless link between the two rights, and, where one right ends, the other is engaged. Therefore, at no point is hunting not protected by the Convention to the extent that the Government must at least justify its interference with hunting.[39]

4.33 Further, the Claimants submit that, consistent with the case law, Article 11 should be read consistently and construed as the Courts have construed Article 10. That Article protects, to all intents and purposes, all forms of freedom of expression. Similarly Article 11 applies to all forms of peaceful assembly.

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[38] See ***Chassagnou v France (1999) 29 EHRR 615*** - breach of Article 11 to compel landowners opposed to hunting on ethical grounds to join a hunting association and transfer their hunting rights to it.

[39] Further, in ***Chassagnou***, the European Court of Human Rights noted that there is no right to hunt as such in the Convention, but it acknowledged that other rights, such as the right to association, may be engaged. The case is not authority that the Convention does not protect hunting. Simply because a particular activity is not mentioned by the Convention does not mean that the Convention will not protect it. The obvious example is sexual orientation which gets no mention in the Convention, but which the Court has interpreted as being guaranteed the highest level of protection under Articles 8 and 14.

4.34 It will therefore be submitted by the Claimants that the ban on hunting with dogs constitutes an interference with Article 11 rights.

Interference is not justified under Article 11(2)

4.35 The State has through the Hunting Act restricted the Claimants' rights to associate and assemble because the legislation "deprives the applicants of any possibility of jointly or individually pursuing the aims laid down …and of thus exercising the right in question."[40]

4.36 For the reasons set out above in relation to Article 8(2), the ban:-

(i) does not satisfy the requirement of lawfulness;

(ii) does not pursue a legitimate aim and is not rationally related to any such legitimate aim as may be established;

(iii) is not necessary to serve a pressing need;

(iv) and, in any event, is a disproportionate measure. Accordingly, the interference with the Claimants' protected rights is not capable of justification under Article 11(2).

4.37 Parliament cannot lawfully ban for political or moral reasons an activity of which it disapproves and for which people have historically assembled and/or associated unless the banning measure is coherent and capable of justification by reference to a legitimate objective in Article 11(2). Hunts and the communities around them will not survive in the same form and the

[40] See paragraph 31 of ***Sidiropoulos v Greece 27 EHRR page 697.***

association will be pointless as the purpose will no longer exist.

4.38 The relevant sections of the Hunting Act must therefore be declared incompatible with Article 11.

Article 1 of the 1st Protocol

Engagement

4.39 Article 1 of Protocol 1 provides as follows:

"Protection of property:-

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

4.40 The rights guaranteed by Article 1 of Protocol 1 are engaged on the facts of the 2nd to 11th Claimants' cases and in many thousands of other potential cases of those represented by the 1st Claimant.

4.41 Parliament and the Government are required to respect the Claimants' right peacefully to enjoy their

property, and to respect the rights of ownership of goods and chattels.

4.42 The types of possessions which are within the remit of the protection of Article 1 of Protocol 1 and have been interfered with are as follows:-

In respect of land[41]

i. Use of land to hunt by the owner;

ii. Permitting others to hunt over one's own land;

iii. The value of land;

iv. Expense associated with the removal of buildings and equipment which is of use only in the hunting industry;

v. The reinstatement of land which has been modified specifically for hunting with dogs;

In respect of livelihoods[42]

vi. An individual's job and/or his livelihood;

vii. The benefit of an existing contract of employment or contract for services;

viii. Goodwill in and/or the value of existing businesses which are reliant on the hunting industry for a large proportion of their income and even the viability of their business;

In respect of other Property

ix. Dogs;

x. Horses;

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[41] In the case of ***Adams*** at 1st instance, before the Lord Ordinary, it was accepted by the Defendants that Article 1 Protocol 1 rights were engaged to the extent that the ban restricted the use to which the Claimants could put their land and their dogs.

[42] The case of ***Adams v Scottish Ministers*** both before the Lord Ordinary at 1st instance and in the Inner House is also authority for the proposition that a persons livelihood and any tied accommodation are possessions for the purposes of Article 1 Protocol 1.

xi. Vehicles;

xii. Miscellaneous equipment.

4.43 The principal components of the right peacefully to enjoy a possession are firstly the right to enjoy and use it as the owner or possessor pleases; and secondly the right to dispose of it for value.

Interference - control of use or deprivation?

4.44 On the facts of these cases there is the plainest interference with the principal components of the Claimants' peaceful enjoyment of their possessions.

4.45 The Claimants submit that the first question for the Court is whether the interference constitutes a deprivation of property or a control of use.

4.46 The precise nature of the interference varies between Claimants but, for ease of the argument, the headings used at paragraph 4.42 are adopted and classified as either deprivation or control of use.

4.47 Land

(i) Use of land to hunt by the owner

It has been accepted for centuries that man has the right to take animals and birds of all kinds on his own land. However, landowners and occupiers have been restricted by law as to the methods used or the species to be hunted. Wild animals (ferae naturae) such as foxes and ground game (eg. hares and rabbits) are ownerless and have always been fair game for owners and/or occupiers who wish to hunt. The

7th - 9th and 11th Claimants can no longer hunt foxes or hares or control vermin on their own land with dogs. The 10th Claimant can no longer use his dogs to chase foxes and deer away from his trees and his stock. If he is to stay within the law, he will be forced to shoot them, an action he is unwilling to take on moral and ethical grounds. These are clear examples of a control of use of land. For ease of managing this Claim the Claimants have been restricted in number. But there are numerous other examples of this type of interference in the evidence in support of the Claim.

(ii) Permitting others to hunt over one's own land

The 7th, 8th, 9th, 10th and 11th Claimants wish to allow others to hunt over their own land. If they continue to use their land as they wish they will commit a criminal offence. This again is a control of use.

(iii) The devaluation of land

The 6th, 7th and 9th Claimants, for the reasons set out in their witness statements have land, other real and moveable property which is devalued and in some cases rendered valueless as a result of the prohibition on hunting. These interferences are examples of both control of use and *de facto* deprivation of possessions.

(iv) Expense associated with the removal of buildings and equipment which is of use only in the hunting industry

The 6th, 7th and 9th Claimants adapted their property purely for hunting activities which are now unlawful. For the reasons set out in

their witness statement there has been a de facto deprivation of their possessions.

(v) The reinstatement of land which has been modified specifically for hunting with dogs

The 6th, 7th and 9th Claimants, for the reasons set out in their witness statements have land, other real and moveable property which are devalued as a result of the prohibition on hunting and which will require reinstatement. The economic consequences of this control of use are set out fully in their witness statements.

4.48 Livelihoods

(i) An individual's job / his livelihood

The 2nd, 3rd, 4th, 5th and 6th Claimants will lose their livelihoods and have in Convention terms been deprived of their possessions. The direct effect of the prohibition is that these Claimants can no longer practice their profession, trade or calling and as a result they will suffer severe economic loss.[43]

(ii) The benefit of an existing contract of employment or contract for services

The 2nd, 3rd, 4th, 5th and 6th Claimants all have vested rights (including tied accommodation in some cases) under existing contracts from which they were receiving an actual economic and lifestyle benefit. In Convention terms they have been deprived of their possessions.

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[43] See ***Trakorer Aktiebolag v Sweden (1989) 13 EHRR 309; Adams v Scottish Ministers*** paragraph 97

(iii) The loss of goodwill / value of existing businesses which are reliant on the hunting industry for their viability

In addition to losing their livelihood the 3rd, 5th and 6th Claimants have also been deprived of the ability to realise the existing value and goodwill of their business, the prospect of any economic gain from such a sale having been removed by the provisions of the Act. They have accordingly been deprived of their possessions.

4.49 **Other Property**

The 2nd - 9th Claimants each have possessions that can only be used for the purposes of the types of hunting with dogs that are now prohibited. They set out their particular personal circumstances in their witness statements in support. They each (variously) have horses, dogs, vehicles and miscellaneous equipment that have, in realistic terms been rendered essentially valueless by the prohibition. The 7th, 8th and 9th Claimants' dogs and/or horses are suitable only for hunting. The ban on hunting has devalued and/or rendered these animals worthless, their only role or purpose has been removed by the legislation and they will all have to be humanely destroyed. This is a direct effect of the legislation and amounts to a deprivation or de facto deprivation. In any event, this amounts to an interference with the substance of ownership which constitutes at the very least a control of use which also falls to be justified by reference to the general interest.

Such interference is not justified in the general / public interest

4.50 Interference with Article 1 Protocol rights by the State can only be justified if the Court is satisfied that the interference is in the general interests of the public[44] and that a fair balance has been struck between the Claimants' Convention rights and the general interest of the public.

The Interference is not in the public interest

4.51 What is or is not in the general interest must be considered by reference to the kind of permitted interferences recognised under Articles 8(2) and 11(2). To that extent the Claimants repeat the submissions already made in relation to justification under Articles 8 and 11 as to lawfulness, legitimate aim, pressing social need and proportionality.

4.52 As with the Article 8 and 11 arguments, the Defendants can only embark upon a justification for the interference and seek to establish that the Act strikes a fair balance between the competing interests if they can satisfy the Court that the Act pursues a legitimate objective. The Claimants submit:

(i) That if the Act does not pursue a legitimate objective, then it cannot serve the public or general interest.

(ii) Further, that the view of Parliament that a prohibition on hunting did serve the public or general interest is "manifestly without

[44] ***Sporrong & Lonnroth v Sweden (1982)5 EHRR 35*** para 60.

reasonable foundation."[45] This is the view not only of the Claimants but was also that of the sponsoring Minister of State, Mr Alun Michael MP, who supported regulated hunting not a ban. On 14th May 2003 he expressed the Government's view that a prohibition would "destroy the architecture of the Bill."[46] This fair assessment was not accepted because of the prejudices of the majority in the House of Commons.

4.53 Parliament could not lawfully or rationally take the view that it was in the "general interest" of the public to control the Claimants' use of their property and/or deprive them of it via a ban, unless the banning measure served a legitimate objective (which it did not); was rationally related to that objective (which it was not); and was coherent and capable of justification (which it is not). For the reasons set out above as to the irrationality and arbitrariness of the legislation the ban cannot rationally be described as in the "general interest."

Absence of a fair balance

4.54 Further, or in the alternative, for the reasons already set out in relation to justification under Articles 8 and 11, the Act does not achieve a fair balance.

4.55 The Claimants submit for those reasons, which will be fully set out in a written argument, that the

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[45] See ***Sporrong and Lonnroth v Sweden (1982) 5EHRR 35*** at paras 69 and 73; ***James v United Kingdom (1986) 8 EHRR 123*** at paragraph 50.

[46] See paragraph 60.2 of Ann Mallalieu's statement.

legislation fails to strike a fair balance between the general interest of the public and the Claimants' Article 1 Protocol 1 rights.

4.56 The said Claimants submit that such controls upon use and/or deprivation / de facto deprivation are not capable of justification in the general interest of the public / community as a whole. They fail to strike a fair balance between the competing interests of the Claimants and any general interest that the Defendants might establish exists.

4.57 The Claimants will submit that any interference with Article 1 of Protocol 1 whether found to be a control of use or a de facto or actual deprivation of property, cannot strike a fair balance, even if the Act had included an adequate scheme for financial compensation.

4.58 Without prejudice to the generality of the foregoing submission, the Claimants will submit in the alternative that, for a fair balance to be struck, such a compensation scheme would be a prerequisite.

4.59 Therefore, because the legislation does not pursue a legitimate aim or because any violation of protected rights are not capable of justification, the Act must be declared to be incompatible with Article 1 Protocol 1.

Article 14

4.60 Article 14 provides as follows:

"Prohibition of discrimination:-

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

4.61 Further, or in the alternative to the arguments arising from Articles 8, 11 and Article 1 Protocol 1, the Claimants submit that they have been discriminated against both directly and/or indirectly in relation to those same Convention rights.

4.62 If the Claimants fail in their foregoing argument on violation of the said rights they ask this Honourable Court to consider the claims in relation to Article 14 alone, the facts of these cases on any view being within the ambit of or connected with the said rights.

Direct Discrimination

4.63 The Claimants submit that there is direct discrimination against them as country dwellers and, more narrowly, as members of the hunting community. In respect of their status as members of the hunting community they are treated differently on the

prohibited ground of "other status" from those in comparator groups. Those groups are:

(i) Those who wish to hunt or control wild mammals such as foxes, hares or deer using means other than dogs, such as with a bird of prey, by shooting, or any of the other legal methods available.[47]

(ii) Those who wish to take part in either coarse or game fishing.

(iii) Those who wish to shoot duck, geese, wildfowl or game birds.

4.64 The Claimants are treated differently and more harshly than the chosen comparator groups. That difference of treatment is not justified. The arguments in relation to the lack of justification for the selected ban on hunting wild mammals with dogs summarised in relation to Article 8(2) are applicable here.

Indirect Discrimination

4.65 The Scottish Inner House in Adams held that there was no discrimination because the ban on hunting with dogs applied equally to all citizens of whatever status (see paragraph 113). But they failed to take account of the concept of indirect discrimination.

4.66 The Claimants rely on the concept of indirect discrimination enunciated by the European Court of Human Rights in McShane v United Kingdom (2002) 35

[47] Again, also those who are able to, subject to the relevant statutory controls, to poison, trap or snare certain wild mammals.

EHRR 23 at para 135:- "where a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory notwithstanding that it is not specifically aimed at that group."[48] The Act may be of universal application to all those who seek to hunt certain wild mammals with dogs (in non-exempt situations). But, though this legislation is, on its face, of universal application, it in fact has a disproportionate adverse impact on a particular group by comparison with persons not in that group.

4.67 The ban in the Act has a disproportionate adverse effect on those who live in the countryside, and has a particularly disproportionate effect on the lives of those who live in remote rural areas such as Somerset, Devon and Cornwall and the upland areas of Wales and Cumbria. In rural areas in general, and those areas in particular, the ban has a massively disproportionate effect in that it will destroy actual livelihoods on a very large scale and ruin an entire way of life for whole communities.

4.68 The Claimants further submit that the Act violates both Article 14 and the common law principles of equality and non arbitrariness. Parliament has enacted a law that, without any justification, fails to treat differently persons whose situations are significantly different. It is an axiom of rational behaviour that like cases should be treated alike and

[48] Also see ***Belgium Linguistic Case (No 2) (1968) 1 EHRR 252 Ect HR at 256*** para 4(e); ***Marckx v Belgium (1979) 2 EHRR 330***, ECt HR para 40; ***Thlimmenos v Greece (2000) 1 EHRR 411*** at para 44.

unlike cases treated differently.[49] Given the disproportionate effect of the ban on the rural community as a whole, and in particular on those rural communities identified within this claim, the imposition of the ban on all localities equally has a discriminatory effect which cannot be justified. Indeed, it was for this very reason that the government opposed an outright ban and supported instead the regulation of hunting on a selective basis that had regard to the evidence of its use in each locality. Parliament, by rejecting that more sensitive solution, has been guilty of discrimination and of a failure to treat different cases differently.

4.69 The Claimants further adopt Justice Jackson's reasoning in Railway Express Agency Inc v New York 336 US 106, 112-113 (1949) when he stated:-

"I regard it as a salutary doctrine that cities, states and the Federal Government must exercise their powers so as not to discriminate between their inhabitants except upon some reasonable differentiation fairly related to the object of the regulation. This equality is not merely abstract justice. The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely nothing opens up the door to arbitrary action so

[49] See ***Matadeen v Pointu & Minister of Education and Science [1999] 1 AC 98*** at para 109 per Lord Hoffman; see also ***A(FC) v Secretary of State for the Home Department.***

effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation."[50]

JUSTIFICATION

4.70 The Claimants repeat the submissions already made under Article 8(2) as to the lack of justification for the arbitrary and discriminatory ban on hunting with dogs with its disproportionate impact on rural communities in general and especially on certain particular rural communities.

4.71 Above all, the situation achieved by Parliament (albeit the House of Commons acting through the Parliament Acts 1911 and 1949, rather than through the consensus of both Houses) through the Act does not achieve a "just balance" between the interests of the general public and the Claimants.

4.72 The Claimants are therefore discriminated against in breach of Article 14 when read together with Articles 8, 11 and Article 1 of Protocol 1. The discrimination arises because the ban treats the Claimants differently without any objective or reasonable justification.[51]

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[50] See generally the discussion headed "Discrimination" between paras 45-54 in Lord Bingham's judgment in ***A(FC) & others v Secretary of State for the Home Department*** (infra).

[51] See ***Thlimmenos v Greece (2000) 1 EHRR 411*** at para 44.

4.73 The lives of tens of thousands of ordinary working and country people will now be blighted by the actions of the legislative majority in enacting an outright ban not on the basis of evidence and principle, but on the basis of emotion and prejudice.

Further Alleged Violations of Convention Rights

4.74 The Claimants also submit:

(i) The Act is unfair and violates the Claimants' rights under Article 6(1) and 6(2) of the Convention because the accused person is denied the opportunity to challenge in Court the implied presumption in section 1 of the Act that hunting with dogs is a cruel activity. Where criminality depends crucially on a value judgment that must be made in the circumstances of a particular situation, and the value judgment is itself highly controversial, both fairness and the presumption of innocence require that the accused be allowed to put his case to an independent Court on the very issue on which his criminality depends.[52]

(ii) The drafting of the relevant sections of the Act which make hunting with dogs punishable makes insufficiently clear where the limits of criminal conduct lie. This is particularly so in relation to the issue of whether mere pursuit of a wild mammal with dogs is

[52] See ***International transport Roth GmbH v Secretary of State Home Department [2003] QB 728*** at para 27.

sufficient of itself to satisfy the definition of "hunting" and therefore constitute a criminal offence. The Act and the DEFRA interpretation of it leave this matter unclear. The legislation therefore fails to satisfy the requirement of Article 7(1) because the definition of the criminal offences that it creates are insufficiently precise to enable the Claimants (specifically the 10th Claimant) to know in advance whether their conduct is criminal.[53]

CONCLUSION

4.75 For all the above reasons, it is therefore submitted that the Claimants are entitled to Declarations of Incompatibility pursuant to section 4(2) of the Human Rights Act 1998.

EDWARD FITZGERALD QC

RICHARD LISSACK QC

NICHOLAS BOWEN

ROBERT-JAN TEMMINK

Dated: 9 February 2005

The Claimants believe the facts in this detailed statement of grounds for judicial review are true.

I am duly authorised by the Claimants to sign this statement.

Signed: .....

Claimants' solicitor

Full name: Andrew Joseph Campbell Clark

Name of Claimants' solicitor's firm: Allen & Overy LLP

Position or office held: Partner

[53] Also see paragraph 33 for argument upon certainty of law.

APPENDIX

ANOMALIES AND INCONSISTENCIES

As pleaded at paragraph 1.9 of the Claim Form the Hunting Act is arbitrary and irrational in its effects as between wild mammals and other living creatures.

The following anomalies are relied upon by the Claimants, the list includes a more detailed account of the three examples of arbitrariness set out between paragraphs 1.9(i)-(iii):

i. It is unlawful to hunt any wild mammal with a single dog or dogs (not only foxes, mink and hares as per the example given at paragraph 1.9(i)). Hunting mammals with a dog or dogs is only lawful if the mammal is a rabbit, a rat or a shot hare. Rabbits and rats feel as much pain as any other wild mammal. Hence, it is difficult to see how animal welfare or prevention of unnecessary suffering can be the legitimate objective behind the Act.

ii. The inclusion of the rabbit or the rat in Schedule 1 and allowing them to be hunted with dogs cannot be explained on the basis that they are vermin or pest species. If the status of vermin or pest species justified hunting them with dogs then other pest species or vermin would have been included. There is no rational explanation for the different treatment of mink, foxes, stoats, weasels, coypu and grey squirrels from rabbits or rats - they are all recognised as pest species/vermin.

iii. It is therefore lawful to hunt a rabbit but unlawful to hunt a hare, lawful to hunt a rat but unlawful to hunt a mouse.

iv. It is lawful to use a dog below ground to flush out and shoot a fox or other wild mammal in order to protect game or wild birds which are being kept or preserved for the purpose of shooting.

v. It would be unlawful if the person keeping or preserving those birds did not intend that they should be shot.

vi. Whilst the dog can be lawfully used under ground to protect wild or game birds being preserved for shooting, it is unlawful to use it to flush the mammal out to protect poultry, other foul or livestock.

vii. It would also be unlawful for a person to use a dog below ground to relieve the suffering of fox cubs from starving to death when their mother has been killed.

viii. It is lawful for a person on his own land to flush out a wild mammal that is a threat to his property with no more than 2 dogs

ix. However, and entirely irrationally, he will commit a criminal offence if he wishes only to chase the mammal away and does <u>not</u> wish to kill it, he will however have a defence if having

flushed the mammal from cover he has attempted to shoot it as required by Schedule 1 of the Act.

x. If the mammal that is shot happens to be a deer, despite having a defence under the Act to a charge under section 1, he will commit a different criminal offence under the Deer Acts if it is shot in the "closed season" or with the wrong type of firearm.

xi. It is lawful to flush out any wild mammal with a dog or dogs in order deliberately to hunt and/or kill it with a bird of prey.

xii. However deliberately seeking to kill that same mammal with a dog or dogs is now unlawful.

xiii. The Act is arbitrary and irrational in that it singles out and bans hunting with dogs but leaves intact other means of killing wild mammals which can involve more suffering than the use of dogs.

xiv. The Act is arbitrary and irrational in that it singles out and bans hunting with dogs where other activities which can involve more suffering to wild mammals remain lawful.

xv. Any pain which may be caused to coarse or game fish as a result of the sport of angling remains lawful, but it is unlawful to hunt a wild mammal with a dog for the purposes of pest

control even though there is no evidence that this causes unnecessary suffering.

xvi. Any pain which may be caused to a wild mammal as a result of shooting whether for sport or pest control remains lawful but it is unlawful to hunt a wild mammal with a dog for the purposes of pest control even though there is no evidence that this causes unnecessary suffering.

xvii. It is lawful to poison, gas, trap or snare a wild mammal (under the current laws relevant to these activities) but not to hunt it with a dog or dogs.

Restricted - Policy

FROM: Peter Tallantire
Civil Contingencies
Secretariat
10 Great George Street
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DATE: 10 February 2005

PS/Hazel Blears

HUNTING WITH DOGS – CIVIL CONTINGENCY PLANNING

I wrote to you shortly before Christmas setting out the arrangements which had been put in place to report on hunting-related disruption should it have arisen over the Christmas period. I am now writing to outline the arrangements we are putting in place as we approach the point at which the Act is due to come into effect.

2. Hunting will continue as previously leading up to the 18 February and is unlikely to create major public order problems. Probably the most significant event will be the annual hare coursing at the Waterloo Cup during 14 to 16 February. This has been brought forward by a week in order to allow it to take place within the law. This event is always a focus for confrontation between coursers and opponents, although confrontation may be at a lower level this year, as opponents know it will be the last and therefore fewer are likely to be present. The same applies to hunt meets throughout the country. There is also the possibility of action by hunt protestors to target significant non-hunting events, such as next week's visit by the International Olympic Committee. The police are alive to the risk and are putting appropriate response arrangements in place.

3. From 14 to 18 February, Police Forces in England and Wales will report, on an exception basis, significant incidents of hunting-related protest or disorder to Government (CCS, Home Office and DEFRA) via the Police National Information Coordination Centre (PNICC). For 19 February, the day of the planned mass protest 'hunt', which is expected to be more a show of support for hunting than defiance of the law, police forces will report numbers of hunting protest related arrests, details of 'hunting' activity, and allegations received of illegal hunting. This report is due to be available from 7pm that evening. The on-going requirement for these arrangements will be reviewed in the light of the reported level of protest and allegations of hunting, and the anticipated level of hunting type activity during the

following week. There is unlikely to be a report on the 20 February as traditionally, there are no 'hunts' on Sundays, although this will be kept under review.

4. The Cabinet Office's Civil Contingencies Secretariat will co-ordinate cross-government activity and reporting, if necessary via a Situation Cell incorporating the key stakeholders to monitor and assess the situation and review press lines. Cabinet Office co-ordination centres will be, as normal, at one-hour's notice to open in the unlikely event of significant public disorder.

5. In the event of media queries on hunting as we approach the 18 February, the assumption is that the Home Office will lead, with Defra available to advise the Home Office on specific issues about the detail of the Act, hunting and animal welfare. I would be grateful if you could confirm whether this will be the case. The Government Communications Network (Cabinet Office) is working with Home Office and Defra press officers to update the coordinated media strategy and the core brief, which also covers enforcement issues. This will also be made available to ACPO.

6. A recent CCS paper for the Domestic Horizon Scanning Committee assessed that although some protest and direct action is likely to continue after the ban comes into force, the risk of significant disruption by pro-hunt activists and extremists was judged to be low. Certainly, the pro-hunting movement appear relatively muted at the moment, but this could be down to the current high degree of uncertainty around whether the ban will come into effect on 18 February. The police expect to focus initially on gathering evidence rather than immediate arrests and this should help to keep the situation calm, but the temperature is likely to rise if anti-hunt protestors feel hunting is continuing unabated after 18 February. We and the police will be actively looking for any signs that activity by hunt supporters could give rise to a wider disruptive challenge.

7. CCS will continue to stay in close touch with the key stakeholders and review arrangements as required.

8. I am copying this note to Alun Michael's office, Sir David Omand, Bruce Mann (CCS), Martin Hurst (No10), Mike Gillespie (HO), James Bradley (Defra), Carol McCall (GCN), and Guy Gardener (ACPO).

PETER TALLANTIRE

Karen Lovesey

From:	Kate Gross
Sent:	10 February 2005 15:38
To:	'rebecca.hilsenrath@lslo.x.gsi.gov.uk'
Cc:	Matrix Filing
Subject:	CONFIDENTIAL: Hunting

SUBJECT MASTER Filed:

The Prime Minister and the Attorney General met to discuss Hunting earlier today.

The PM explained he did not want to see extensive police and CPS resources being expended on hunting cases, given the relative priority the Government accorded to offences under the Hunting Act in comparison with more serious crime and disorder. As such, if the Court refused the CA's application for an injunction, he hoped that the CPS could follow the Scottish lead and adjourn prosecutions under the Hunting Act until the legal challenges were exhausted. He was clear that this was a decision for the DPP, in consultation with the AG, given the independence of the CPS.

The AG explained that once the Act had come into force, the Police would enforce it, and if people were caught breaking the law, they might be arrested, subsequently charged, and so face an initial hearing in Court before the question of adjourning individual prosecutions was decided. However he thought that in practise it was highly likely that the CPS would adjourn trials until the legal challenges were completed.

The PM thought it would be important to find a form of words for the CPS to use to explain the process of adjourning individual prosecutions before the Act came into force, and once the Court of Appeal had given judgement and the question of injunctions was settled. This would be useful in order to diffuse tensions, and the likelihood of hunters trying to set themselves up as 'martyrs' when the Act comes into force on 18 February.

I am therefore attaching a form of words, which I would be grateful if the Attorney could discuss with the DPP.

"Though the legal challenges against the Hunting Act continue, the Act itself has now come into force. Whilst individuals who are in breach of the law may be arrested and charged, the CPS will consider [on a case-by-case basis] whether prosecutions should be adjourned whilst the legal challenges proceed through the [House of Lords]. This is standard procedure: the CPS has, in the past, adjourned large numbers of cases affected by judicial reviews. This was the approach taken in Scotland whilst challenges to their Hunting Act progressed through the Courts."

10 DOWNING STREET

PM

Hunting

I don't agree with PG's advice + I'll speak with you.

This is not looking good

I suggest we:

a) Hope the injunction works

b) If it does not immediately go for suspension of prosecution (the Scottish option - AG's view on this as CA interested)

c) If we have to, consider a short bill to suspend application for 18 months - very controversial.

I will speak to JJ.

From: Kate Gross
Date: 1 February 2005

PRIME MINISTER

cc: Jonathan Powell
Sally Morgan
Pat McFadden

HUNTING

Where we are now

The Court of first instance dismissed the CA's case, but granted them leave to appeal. The Court of Appeal have now drawn together a heavyweight panel (Lord Chief Justice, Master of the Rolls) to hear the appeal on 8 February. We expect they will give judgement on the 10/11th February. At this stage the Court of Appeal are likely to hear the CA's application for interim relief. If they *reject* the case for interim relief, the CA are able to apply to appeal to the HoL, and at the same time can ask the HoL to grant interim relief. It is extremely unlikely that the HoL would be able to hear the substantive appeal before 18 February, but the AG thinks there is a good chance they might decide the case for interim relief before then.

The Courts are alive to the political sensitivity of the issue, indeed they cited it as a primary reason why they allowed the CA leave to appeal. However, their strategy seems to be to expedite the case in order to provide as much legal certainty as possible on the validity of the act by 18 February – rather than letting the case proceed through the Courts on the normal timetable and granting an injunction whilst this happens.

At present, the AG thinks that the chances of the Court of Appeal granting interim relief stand at around 30-40%. Our argument – that the exceptional circumstances in this case mean that hunters must have absolute certainty as to the validity of the Act, so it should not be implemented whilst the legal case continues – is a reasonable one. He thinks that the chances of the HoL granting interim relief are slimmer (because the Higher Courts rarely reverse the decisions of the lower courts) but not out of the question. Overall, if all the Courts refuse an injunction the AG is clear that the Government must enforce the legislation Parliament has passed. The only way around this that we can see is for Parliament to re-legislate.

Options

I've consulted the AG on 'imaginative' ways of persuading the Courts to grant interim relief, and gone over the other options available to us at this stage. You should bear in mind Pat's judgment is that the PLP will wear something which is seen as providing a delay in order for the CA to accept the ban: but would not stand for something which looked like the Govt back-tracking on the ban or trying to delay it further. It is also very difficult to second-guess what the Courts will do at any point.

(i) Injunction

The AG advises that nothing we do at this stage is likely to substantially improve the chances of the Courts granting interim relief, and he fears that any action we took now might actually be counter-productive. The Courts themselves will not want to be seen to acquiesce in the face of political pressure, and are alive to suggestions that they are being circumvented. And there is a real chance that even if *all* parties agreed to interim relief, the Courts might still decide not to grant it on the grounds that they do not have jurisdiction to suspend a valid Act of Parliament (which is effectively what the Court of Appeal would have ruled it was).

The one change we could make which *might* encourage the Courts to grant interim relief would be to change our stance from neutral to actively supporting the CA's application. But this would be a slightly more difficult position to defend in legal terms ("we don't think the CA have a valid case but we want to see an Act of Parliament suspended anyway"), and the AG is very worried that the effect on the Courts might actually be counter-productive. Equally, he thinks that *neutrality* is an unprecedented step for Government and, combined with what he would say in Court on the subject, sends a strong enough message to the Courts that we are in favour of an injunction. No doubt Alun would strongly resist any change to our position, as he made it clear to the House that the Govt was neutral and it was for the Courts to decide.

Taking this idea one step further, the Government could actually *apply* for interim relief alongside the CA. This might increase the chances of the Court granting an application (though the same issues as above apply). However, the AG has said that constitutionally, he would not be comfortable with asking the Courts to suspend a piece of Government legislation passed by Parliament.

(ii) Injunction in human rights case

The CA haven't yet launched an ECHR challenge (despite media reports to the contrary). If they do launch such a challenge, it is likely that this would take

some 2-3 months to reach initial hearing, a further 6 months to appeal, and a further 6 months to reach the HoL, assuming that the Courts do not expedite the case. It is *extremely* unlikely that the HoL would refer the case to Strasbourg. So all in all the case might take around 18 months to settle.

The CA have not said whether they would apply for interim relief for the duration of an ECHR challenge. But the AG is clear that the question of interim relief simply does not arise in respect of an ECHR challenge. This is because the outcome of a successful ECHR challenge would be a declaration of incompatibility with the Hunting Act (as with the HoL judgement on the Part IV powers). So the Act would not be declared invalid, merely incompatible with ECHR. In this instance, Parliament would have to consider whether/how to re-legislate to bring the Act into line with ECHR. Cases for compensation could also be brought. So the AG's advice is that the Government cannot take a neutral, or supportive stance in relation to interim relief as it simply does not apply in this case. – I don't understand this. Surely we do have to amend if ECHR incompatible

(iii) Re-legislate

The Government could say that it intended to introduce emergency legislation to delay implementation of the ban until July 2006, or to reverse the ban and replace it with a licensing scheme. We could say that it would be a nonsense to implement the ban under these circumstances and support (or even ask for) an application for interim relief whilst the matter was once again put before the House.

Apart from the consequences for the legislative programme (already derailed by emergency legislation on terrorism), and the potentially incendiary impact on the PLP, there is no guarantee that this would actually encourage the Courts to grant an injunction. The Courts might well take the view that the Government's intention was not relevant, as there is no guarantee that Parliament would support their proposals, and since Parliament had already voted to ban hunting and bring this into force on 18 Feb this is the legislation which must now be implemented.

(iv) CPS to suspend prosecutions

If the ban does come into force on 18 February, the CPS has the discretion to adjourn prosecutions until the legal challenges are exhausted. This is what happened in Scotland. This would not stop individuals being arrested and charged for breaching the Act, but it would suspend their prosecutions until the Courts had made a final decision on the legal challenges, and mean that no cases actually

came to Court for quite some time. This would apply for the duration of the Parliament Act and ECHR challenges (i.e. 2yrs+).

Policing of a ban

Hazel and Alun have been working with the police on preparations should the ban come into force on 18 Feb. ACPO have released headline guidance to forces, and plan on sending out further guidance in conjunction with the CPS next week. The guidance implies a low-key approach to enforcing the ban for this (and future) seasons. Key points:

- Forces to decide locally what priority to give to enforcing the ban compared to other operational priorities as set out in the National Policing Plan.
- In general, breaches of Hunting Act to be treated as 'animal cruelty' offences (i.e. low priority).
- The offence is not recordable and will not lead to a criminal record.
- There is no 'duty' to arrest: just a 'power' and guidance suggests that arrest may not be the most "*proportionate and reasonable response to breaches of the Act*" – evidence gathering, followed by a summons if someone has clearly broken the law, may be better.
- Police should not intercept hunts – "*it is difficult to envisage a situation in which it will be practicable for police to intercept a hunt and persons in the act of hunting*".

Many Chief Constables have said that they are not prepared to divert resources to policing the ban. Unless people are flagrantly causing public order problems, they will treat it with the same priority as animal cruelty offences. And the latest intelligence from Hunting communities is that they will continue to hunt *within the law* and will find other ways to protest.

I have reinforced again that Hazel and the HO need to keep on top of this and ensure that DEFRA are being sensible rather than taking an over-enthusiastic approach to implementing the ban – which should not divert police from their real priorities.

Kate Gross

KATE GROSS

THE HUNTING ACT 2004

NATIONAL STRATEGIC CONSIDERATIONS/PRINCIPLES

The purpose of this document is to seek to establish the strategic principles for the police service in respect of the above Act and reflects a degree of consultation within and without the Service.

This is the 'high level' strategic considerations and also the first stage in satisfying the requirement at paragraph 3.51 of the National Policing Plan 2005-8 for ACPO to produce detailed guidance to assist forces in preparing for the implementation of the Act. I anticipate early in the New Year complementing this with tactical considerations and by then hopefully legal 'points to prove' type guidance from the Crown Prosecution Service, with whom we are working closely but respecting their independence as with other government and voluntary agencies on both sides.

The following strategic principles seem relevant to most policing environments as far as the issue of hunting is concerned:

1. The primary responsibility is the prevention of harm to all people involved.

2 The duty of the police is to prevent disorder and if it occurs to minimise its consequences.

3 The police have a duty to prevent the commission of crime and offences.

4 The investigation of offences and the apprehension of offenders is a lower priority ordinarily than the maintenance of order and safety.

5 Police activity should take into account the various calls for service from various groups.

6 Police activity should be led by available intelligence and use where appropriate the National Intelligence Model.

7 An assessment of the likely community impact of police actions (or decision against action) should be made.

8 The priority accorded to proactive measures to tackle persons offending against the Hunting act (if any) should be driven by, amongst other influences:

a) such offences are not notifiable/recordable offences

b) resource considerations

c) what is practicable – safely

d) what is within the powers of the police

9 Similar considerations to 8) may apply to reactive investigations (i.e. those where persons allege breaches of the Hunting Act) – additionally police will need to take account of the possible consequences of frustrations building up if people feel a legitimate (if disproportionate) expectation is not being fulfilled.

10 Whilst police have a duty to enforce the law when breaches are apparent and to forestall potential breaches, the priority given to this should be determined locally, taking account of 8 and 9 and the National Police Plan's other priorities. Police are of course not the sole element of law enforcement and partners – public and private – have responsibilities too.

11 Operational Commanders may well find that the most proportionate and reasonable response to breaches of the Hunting Act lays in evidence gathering with a view to subsequent prosecution as the Act confers a power to arrest, not a duty. It is a matter that should be decided at the time and location with the appropriate justification being recorded as per individual force practice.

12 Police should always be sensitive to the huge passions on both sides of the debate that led to the Act outlawing the hunting of wild mammals with dogs – other than in exempt circumstances.

13 The principal responsibility for comment on the Act now rests with Government – particularly the Department for Farming, Food and Rural Affairs - although forces may well choose to pass comment, if asked, on local implementation.

Security Classification:	**NOT PROTECTIVELY MARKED**		
Disclosable under FOIA 2000:	**Yes**		
Author:	**ACC Nigel Yeo**	Force / Organisation:	**Sussex Police**
Date Created:	**17 January 2005**	Telephone:	**01273 404003**

There are attachments to paragraphs:

As well as being posted on the ACPO Intranet this is being sent by e-mail to Public Order Liaison Officers

Association of Chief Police Officers of England, Wales and Northern Ireland

25 Victoria Street, London SW1H 0EX

Telephone: 0207 227 3411 Fax: 0207 227 3400/3401

General Policing Business Area

Public Order Working Group Lead
Nigel Yeo
Assistant Chief Constable, Sussex Police

17 January 2005

To: ACC Operations

THE HUNTING ACT 2004

National Tactical Considerations

The purpose of this note is to offer some tactical considerations for forces whilst preparing operational orders concerned with the implementation of this Act. It is not intended as a template into which forces should feel obliged to "shoehorn" their individual circumstances. It is apparent that the term "hunting" covers a broad range of activity that is significantly different across the different forces affected by this Act.

This should be seen as complementary to the Strategic Considerations document issued on the ACPO Intranet on 23 December.

In the near future, further interpretation of the Act, its powers and "points to prove" in respect of offences will be issued.

These notes have been prepared after consultation with government and both huntspeople and the legitimate protesters' organisations.

Preparing for the Act

1 At present it is advisable to prepare on the basis that the Act will come into force on 18 February. Whilst much is being made of the various legal challenges to the Act, there is no certainty that the Act will be in any way deferred and to fail to prepare would leave us all vulnerable.

2 It would help enormously to identify single points of contact in forces which will allow proper exchange of information and communication – both with ACPO centrally (me) and with some of the stakeholders who at national level are keen also to identify single points of contact within their organisations to facilitate better communication with them. I have agreed to make these available and would be grateful if forces could identify them to me – they should be at strategic (ACC Operations/Chief Superintendent Operations Department type) level and tactical (Public Order or wildlife/hunt liaison officer) level. Could this information pleased be passed to Mrs Eileen Burton on 01273 404003 or preferably by e-mail to eileen.burton@sussex.pnn.police.uk

3 Forces should seek to gather intelligence regarding the activity of interested parties to determine as far as possible what hunting groups are intending to do (drag or trail hunting, disband, disobey, dog exercising or whatever); what anti-hunt groups are anticipating doing (continue to monitor activity, change to other animal related protest, etc) and the view of any "independents" (e.g. landowners who have allowed hunting without participating).

4 It would be helpful if any public statements (e.g. to police authorities) were to take account of the strategic consideration document (ACPO Intranet 23 December) and to look at the government lines to take where appropriate , the latest of which was dated 17 December and is obtainable from Tim Mahoney at tim.mahony@cabinet-office.x.gsi.gov.uk

After the Act is in force

1 A possible scenario that police are faced with is the potential of breaches of the peace between people on different sides of the hunting issue feeling either triumphant or frustrated. Forces will need to apply the normal principles of public order policing and the conflict management model on such occasions. Indeed, I

would feel that in the immediate aftermath of the implementation of the Act, this is likely to be the greater problem, and certainly has the greatest risk to public safety.

2 It is a matter to be determined locally what priority should be given to this, set against other operational priorities.

3 It is difficult to envisage a situation in which it will be practicable for police to intercept a hunt and persons in the act of hunting – indeed to do so is likely to present considerable difficulties, both in executing such action and discharging our duty for prisoners' property (including animals). It follows then that an entirely appropriate reaction may well be evidence gathering, either by police or in statement form from members of the public, to identify offences and offenders with a view to subsequent action, whether by summons or arrest.

4 I am advised that evidence gathered by overt means by identifiable police officers will not require authorisation under the Regulation of Investigatory Powers Act (RIPA); however, covertly obtained video would. It is suggested that use of helicopters to secure video evidence would be unwise, given the risks to human health caused by frightening horses or hounds with helicopters. Equally, the viability of pursuing hunts on foot, horseback or in suitable vehicles, I would suggest is slim.

5 There is the potential for these matters to go across force boundaries, and the good practice that has existed before of inter-force co-operation would continue to be vital in this area.

6 It is possible that a tactic of those who support hunting will be to seek to get themselves prosecuted as a way of testing the law if they do not get what they desire from the current judicial processes. This may take the form of mass confessions. It is suggested that such activity should be reported and the matter considered by the local Crown Prosecution Service as to whether it passes both the evidential and public interest tests for prosecution.

7 It is worth noting that while offences under the Hunting Act carry a fine of up to £5,000, they are not recordable or notifiable under the national crime recording standards and I am also advised by Home Office lawyers that persons convicted of offences under the Hunting Act will not secure a criminal record and a unique reference number from the National Identification Bureau.

8 It may be felt reasonable and proportionate to warn hunts which we believe to be acting unlawfully, rather than seek to expend the effort in securing a prosecution but still achieving the goal of legality. A prosecution file would draw attention to this warning were it not heeded.

9 Forces should seek to ensure that their communications rooms are supplied with the "line to take" that the force has adopted, given that they are likely to receive allegations of hunting in progress from the public - not least because we can anticipate that people phoning the RSPCA will be redirected to the police.

10 It is expected that forces will receive a number of allegations from well meaning members of the public alleging that hunting is going on in contravention of the ban. We may be better equipped to deal with these if we have been able to establish from hunting groups which intend to convert to legal activity where they are – thus being able to discount well-meaning but inaccurate allegations.

11 A number of organisations who have previously campaigned against hunting such as such as Royal Society for Prevention of Cruelty to Animals (RSPCA), International Fund for Animal Welfare (IFAW) or League Against Cruel Sports (LACS), have expressed a desire to help police nationally in policing the implementation of the Act which may well be replicated locally. The RSPCA may chose to seek to act as a prosecuting authority, largely in liaison with the Crown Prosecution Service. Equally, various hunting bodies such as the Masters of Foxhounds Association (MFHA) have engaged in constructive dialogue.

12 The Countryside Alliance (CA) and Council for Hunting Associations have published on the CA website a guidance entitled Hunting Handbook 2005 which seeks to identify how hunting can be conducted with the provisions of the Act. Forces may find it advantageous to seek to identify when and where such legal activity is taking place, if only to be able to deal with well-meaning but misguided allegations of instances of contraventions of the law.

13 It can be anticipated that groups such as IFAW, who employ hunt monitors, will continue to do so. They are committed at national level to working with police to secure prosecutions relevant to anything they identify. Their hunt monitors may become witnesses, as may others. We should be mindful of their safety as with other persons attending hunts in any capacity.

14 Whilst forces may choose to try and obviate the need to seize animals, the RSPCA have declared a willingness to advise and work with forces should it be necessary.

15 Where hunting is being conducted legally within the provisions of the Act then offences of aggravated trespass would still be committed by people interfering with such activity.

16 Helpful dialogue should be possible with relevant agencies in a locality, including hunts that continue to exist but seek to act legally, legitimate organisations opposed to hunting such as those mentioned above, the Crown Prosecution Service and local landowners' representatives. It is suggested that we be frank with such groups, identifying that the police role is to enforce the law but that the implementation of the Hunting Act must be set against other operational priorities facing the Chief Constable.

17 It has been suggested and would need local confirmation that some landowners, especially institutions (such as the Forestry Commission) may close to bar all hunting (legal or otherwise) on their land – at least in the short term. Local clarification of such decisions would make sense.

18 It would seem good practice for forces to regularly refresh any community impact assessment made after implementation and also should there be any high profile cases.

17 In addition to gathering intelligence and information for the purposes of policing this activity, forces may anticipate either them or their police authorities being requested for information as to current activity. Any requests nationally will be handled by the Police National Co-ordination Centre. It is possible that forces will receive requests by letter identifying their stance and seeking explanation of their reaction to the Hunting Act - I have had several already. I would venture to suggest that additional to the points made by government, it is helpful to retain our impartiality by pointing out we will enforce the law in the context of local priorities and set against other demands on police, bearing in mind this has not been afforded high priority in the National Policing Plan, breaches of the Act are not themselves notifiable or recordable offences and not covered by national crime recording standards.

Nigel Yeo
Public Order Working Group Lead
Assistant Chief Constable

HUNTING

The PM is seeing the AG before Cabinet tomorrow. I have explained to the AG's office that our preferred strategy is:

(a) for courts to grant in injunction

(b) failing this for CPS to say that they will suspend prosecutions for the duration of the legal challenges.

Injunction

AG will say that he is completely opposed to applying for an injunction but might be persuaded to change our position to support someone else's application. But he will also say that it there is nothing we can now do which will make the courts more likely to grant an injunction, and doing either of the above would make them less likely to grant it. Given that changing stance would be very difficult with PLP and Alun, and might anyway be counter-productive I suggest we leave it that our position should remain neutral – unless PM wants to bring this up and challenge AG's arguments.

Adjourning prosecutions

The AG and the CPS were very resistant to the idea of a blanket suspension of prosecutions because it is for the CPS and the Courts to decide on a case-by-case basis. I have said we need to agree a form of words for use when the Court of Appeal give their judgment and if the Q of an injunction is rejected. I sent them the following:

"Given that the challenge to the Hunting Act is unlikely to be resolved before the Act comes into force on 18 February, we intend to adjourn prosecutions under the Act whilst the legal challenge proceeds through the Higher Courts. This is standard procedure: the CPS has, in the past, adjourned large numbers of cases affected by Judicial Reviews. This was the approach taken in Scotland whilst challenges to their Hunting Act progressed through the Courts. Whilst it will be for the Courts to decide on a case-by-case basis whether to adjourn a prosecution it is the CPS's belief that individuals should not be prosecuted whilst the uncertainty of a legal challenge remains"

The AG will come tomorrow with an alternative form of words agreed with the CPS, probably watered down and qualified so that it makes no promise of a blanket suspension. Key points to make:

- PM needs to be able to say *"(whilst it is for courts and CPS to decide on case by case basis) we do not believe that individuals should be prosecuted whilst the uncertainty of a legal challenge remains"*.

- Anything less won't do the trick. Happy for CPS/AG to make formal, legal statement but we must be able to say this – informally at least. AG should speak to DPP if necessary.

- Is it really right that adjournment of prosecutions couldn't also apply if an ECHR challenge was running?

The AG will also want to explain to the PM that adjourning prosecutions will not have same effect as an injunction – i.e. police will still enforce, people will be arrested, and appear in court, at which point case would be adjourned. This is fine and what was in your letter to JJ.

Timing

The Court of Appeal should give judgment on Friday or Monday next week. The question of an injunction would then be heard.

THE LEGAL SECRETARIAT TO THE LAW OFFICERS
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Kate Gross
No 10 Downing Street
BY EMAIL

8 February 2005

Dear Kate

The Hunting Act 2004: claim for judicial review

You asked me to advise on a proposed announcement to be made in the next few days to the effect that the prosecution of offences under the Hunting Act would be adjourned for the duration of any legal challenge to the Act.

The CPS has, as you are aware, in the past when appropriate applied to adjourn cases affected by pending legal challenges. The DPP will, if need be in consultation with the Attorney General, consider whether prosecutions brought under the Hunting Act 2004 need to be similarly adjourned if there are pending legal challenges to the Act. Whether cases need to be adjourned will depend on the nature and progress of any challenges to the Act and the potential impact on prosecutions.

The CPS is not able to agree a blanket approach to prosecutions in advance and, indeed, to do so would presume on the discretion of the court to whom applications for adjournment are made. Further, prosecutions under the 2004 Act do not require the consent of the Attorney General and, in this particular context, there is a genuine possibility of private prosecutions, in relation to which CPS policy is irrelevant. There are also different issues which arise in relation to the current challenge to the Parliament Acts and any putative challenge under the Human Rights Act. In England and Wales (as opposed to Scotland, where the position is different) a challenge under the Human Rights Act would not raise any questions as to the validity of the Hunting Act.

I appreciate that this is not the response for which you were hoping. I attach, for your information, previous advice on this issue from me and from the Attorney.

Yours sincerely

REBECCA HILSENRATH

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Kate Gross
No 10 Downing Street

BY EMAIL

8 February 2005

Dear Kate

The Hunting Act 2004: claim for judicial review

You have asked for the Attorney General's advice on the extent to which the Government will be obliged to enforce the Hunting Act in the absence of any interim relief being granted by the court.

I attach a note of advice on this topic provided by the Attorney last year.

In summary, without the intervention by the court, the Executive is required to implement Acts of Parliament and subordinate legislation and has no power to decline to do so, either in relation to particular offences or in relation to classes of offence. Under the circumstances, the Government would make itself vulnerable to challenge. It can be assumed that bodies such as the League Against Cruel Sports (which has already intervened in the challenge to the Hunting Act) would not be slow to apply for judicial review of any failure by the Government to prosecute breaches of the Hunting Act. The League has already indicated an intention to monitor such breaches.

You indicated that the Countryside Alliance had suggested that:

(a) The Government had a "mandate" to suspend the Act until July 2006 because of the vote in the House of Commons;
(b) The Government could suspend the implementation of the Act on the giving by the Attorney General of an undertaking to the court not to implement the Act for the duration of the legal challenge in relation to the alleged invalidity of the Parliament Acts or, indeed, in relation to the Human Rights Act; and
(c) The terms of such an undertaking should be not to investigate or to prosecute offences until the final decision in the case or until a specific date, whichever was earlier.

In my view, a "mandate" is an indication of popular support for an idea, and does not provide a legal basis for the implementation of legislation already passed. The

vote of the Commons in this instance was not reflected in the final legislation when passed, and as such can play no part in any decision as to enforcement of that legislation.

The Government cannot refrain from implementing legislation without the intervention of the court, and the Attorney General has no right to suspend legislation passed by Parliament. Moreover, there has never been any indication by the Government that it would not oppose an application for interim relief in relation to a challenge under the Human Rights Act.

As suggested in the attached note, it lies in the discretion of the CPS to adjourn cases where a judicial review is pending. However, this is not the same as the suggested terms of the proposed "undertaking". Such an adjournment would not avoid the prosecution itself, and in the event of the court eventually deciding in favour of the Government, the prosecution for any offences committed during the period of the legal challenge would be continued.

Yours sincerely

REBECCA HILSENRATH

Hunting Bill

The Attorney General has no power to direct the police not to enforce current laws.

Any blanket policy not to prosecute classes of or particular offences would in itself be open to judicial review

Either of the above, as with the suspension of the law, would be seen as a device to reintroduce by the back door the delay rejected by Parliament.

The offences under the Act are summary only offences and therefore proceedings have to be commenced within the six month time limit otherwise they cannot be prosecuted.

The CPS has in the past adjourned large numbers of cases affected by pending judicial reviews where appropriate. The DPP will, if need be, in consultation with the Attorney General consider whether this needs to be undertaken for prosecutions under the Hunting Act if there is a judicial review which impacts on the cases.

The Director will also consider, in consultation with the Attorney General, whether prosecutors under the statutory charging scheme should charge offences under the Hunting Bill.

The CPS will develop a prosecution policy in relation to the Hunting Act in consultation with the Attorney General having liased with the police.

LINES TO TAKE

It would be inappropriate for the Law Officers to issue directions to the police or the CPS to ignore illegal hunting.

If prosecutions are impacted upon by a current challenge in the courts then cases may be adjourned on a case-by-case basis pending the outcome of that challenge if the courts see fit.

It is premature to speculate on prosecution policy, as the offences are not yet in force.

RURAL AFFAIRS
Hunting

From: Kate Gross
Date: 1 February 2005

PRIME MINISTER

cc: Jonathan Powell
Sally Morgan
Pat McFadden

HUNTING

Where we are now

The Court of first instance dismissed the CA's case, but granted them leave to appeal. The Court of Appeal have now drawn together a heavyweight panel (Lord Chief Justice, Master of the Rolls) to hear the appeal on 8 February. We expect they will give judgement on the 10/11th February. At this stage the Court of Appeal are likely to hear the CA's application for interim relief. If they *reject* the case for interim relief, the CA are able to apply to appeal to the HoL, and at the same time can ask the HoL to grant interim relief. It is extremely unlikely that the HoL would be able to hear the substantive appeal before 18 February, but the AG thinks there is a good chance they might decide the case for interim relief before then.

The Courts are alive to the political sensitivity of the issue, indeed they cited it as a primary reason why they allowed the CA leave to appeal. However, their strategy seems to be to expedite the case in order to provide as much legal certainty as possible on the validity of the act by 18 February – rather than letting the case proceed through the Courts on the normal timetable and granting an injunction whilst this happens.

At present, the AG thinks that the chances of the Court of Appeal granting interim relief stand at around 30-40%. Our argument – that the exceptional circumstances in this case mean that hunters must have absolute certainty as to the validity of the Act, so it should not be implemented whilst the legal case continues – is a reasonable one. He thinks that the chances of the HoL granting interim relief are slimmer (because the Higher Courts rarely reverse the decisions of the lower courts) but not out of the question. Overall, if all the Courts refuse an injunction the AG is clear that the Government must enforce the legislation Parliament has passed. The only way around this that we can see is for Parliament to re-legislate.

Options

I've consulted the AG on 'imaginative' ways of persuading the Courts to grant interim relief, and gone over the other options available to us at this stage. You should bear in mind Pat's judgment is that the PLP will wear something which is seen as providing a delay in order for the CA to accept the ban: but would not stand for something which looked like the Govt back-tracking on the ban or trying to delay it further. It is also very difficult to second-guess what the Courts will do at any point.

(i) Injunction

The AG advises that nothing we do at this stage is likely to substantially improve the chances of the Courts granting interim relief, and he fears that any action we took now might actually be counter-productive. The Courts themselves will not want to be seen to acquiesce in the face of political pressure, and are alive to suggestions that they are being circumvented. And there is a real chance that even if *all* parties agreed to interim relief, the Courts might still decide not to grant it on the grounds that they do not have jurisdiction to suspend a valid Act of Parliament (which is effectively what the Court of Appeal would have ruled it was).

The one change we could make which *might* encourage the Courts to grant interim relief would be to change our stance from neutral to actively supporting the CA's application. But this would be a slightly more difficult position to defend in legal terms ("we don't think the CA have a valid case but we want to see an Act of Parliament suspended anyway"), and the AG is very worried that the effect on the Courts might actually be counter-productive. Equally, he thinks that *neutrality* is an unprecedented step for Government and, combined with what he would say in Court on the subject, sends a strong enough message to the Courts that we are in favour of an injunction. No doubt Alun would strongly resist any change to our position, as he made it clear to the House that the Govt was neutral and it was for the Courts to decide.

Taking this idea one step further, the Government could actually *apply* for interim relief alongside the CA. This might increase the chances of the Court granting an application (though the same issues as above apply). However, the AG has said that constitutionally, he would not be comfortable with asking the Courts to suspend a piece of Government legislation passed by Parliament.

(ii) Injunction in human rights case

The CA haven't yet launched an ECHR challenge (despite media reports to the contrary). If they do launch such a challenge, it is likely that this would take

some 2-3 months to reach initial hearing, a further 6 months to appeal, and a further 6 months to reach the HoL, assuming that the Courts do not expedite the case. It is *extremely* unlikely that the HoL would refer the case to Strasbourg. So all in all the case might take around 18 months to settle.

The CA have not said whether they would apply for interim relief for the duration of an ECHR challenge. But the AG is clear that the question of interim relief simply does not arise in respect of an ECHR challenge. This is because the outcome of a successful ECHR challenge would be a declaration of incompatibility with the Hunting Act (as with the HoL judgement on the Part IV powers). So the Act would not be declared invalid, merely incompatible with ECHR. In this instance, Parliament would have to consider whether/how to re-legislate to bring the Act into line with ECHR. Cases for compensation could also be brought. So the AG's advice is that the Government cannot take a neutral, or supportive stance in relation to interim relief as it simply does not apply in this case.

(iii) Re-legislate

The Government could say that it intended to introduce emergency legislation to delay implementation of the ban until July 2006, or to reverse the ban and replace it with a licensing scheme. We could say that it would be a nonsense to implement the ban under these circumstances and support (or even ask for) an application for interim relief whilst the matter was once again put before the House.

Apart from the consequences for the legislative programme (already derailed by emergency legislation on terrorism), and the potentially incendiary impact on the PLP, there is no guarantee that this would actually encourage the Courts to grant an injunction. The Courts might well take the view that the Government's intention was not relevant, as there is no guarantee that Parliament would support their proposals, and since Parliament had already voted to ban hunting and bring this into force on 18 Feb this is the legislation which must now be implemented.

(iv) CPS to suspend prosecutions

If the ban does come into force on 18 February, the CPS has the discretion to adjourn prosecutions until the legal challenges are exhausted. This is what happened in Scotland. This would not stop individuals being arrested and charged for breaching the Act, but it would suspend their prosecutions until the Courts had made a final decision on the legal challenges, and mean that no cases actually

came to Court for quite some time. This would apply for the duration of the Parliament Act and ECHR challenges (i.e. 2yrs+).

Policing of a ban

Hazel and Alun have been working with the police on preparations should the ban come into force on 18 Feb. ACPO have released headline guidance to forces, and plan on sending out further guidance in conjunction with the CPS next week. The guidance implies a low-key approach to enforcing the ban for this (and future) seasons. Key points:

- Forces to decide locally what priority to give to enforcing the ban compared to other operational priorities as set out in the National Policing Plan.
- In general, breaches of Hunting Act to be treated as 'animal cruelty' offences (i.e. low priority).
- The offence is not recordable and will not lead to a criminal record.
- There is no 'duty' to arrest: just a 'power' and guidance suggests that arrest may not be the most "*proportionate and reasonable response to breaches of the Act*" – evidence gathering, followed by a summons if someone has clearly broken the law, may be better.
- Police should not intercept hunts – "*it is difficult to envisage a situation in which it will be practicable for police to intercept a hunt and persons in the act of hunting*".

Many Chief Constables have said that they are not prepared to divert resources to policing the ban. Unless people are flagrantly causing public order problems, they will treat it with the same priority as animal cruelty offences. And the latest intelligence from Hunting communities is that they will continue to hunt *within the law* and will find other ways to protest.

I have reinforced again that Hazel and the HO need to keep on top of this and ensure that DEFRA are being sensible rather than taking an over-enthusiastic approach to implementing the ban – which should not divert police from their real priorities.

Kate Gross

KATE GROSS

THE HUNTING ACT 2004

NATIONAL STRATEGIC CONSIDERATIONS/PRINCIPLES

The purpose of this document is to seek to establish the strategic principles for the police service in respect of the above Act and reflects a degree of consultation within and without the Service.

This is the 'high level' strategic considerations and also the first stage in satisfying the requirement at paragraph 3.51 of the National Policing Plan 2005-8 for ACPO to produce detailed guidance to assist forces in preparing for the implementation of the Act. I anticipate early in the New Year complementing this with tactical considerations and by then hopefully legal 'points to prove' type guidance from the Crown Prosecution Service, with whom we are working closely but respecting their independence as with other government and voluntary agencies on both sides.

The following strategic principles seem relevant to most policing environments as far as the issue of hunting is concerned:

1. The primary responsibility is the prevention of harm to all people involved.

2 The duty of the police is to prevent disorder and if it occurs to minimise its consequences.

3 The police have a duty to prevent the commission of crime and offences.

4 The investigation of offences and the apprehension of offenders is a lower priority ordinarily than the maintenance of order and safety.

5 Police activity should take into account the various calls for service from various groups.

6 Police activity should be led by available intelligence and use where appropriate the National Intelligence Model.

7 An assessment of the likely community impact of police actions (or decision against action) should be made.

8 The priority accorded to proactive measures to tackle persons offending against the Hunting act (if any) should be driven by, amongst other influences:

a) such offences are not notifiable/recordable offences

b) resource considerations

c) what is practicable – safely

d) what is within the powers of the police

9 Similar considerations to 8) may apply to reactive investigations (i.e. those where persons allege breaches of the Hunting Act) – additionally police will need to take account of the possible consequences of frustrations building up if people feel a legitimate (if disproportionate) expectation is not being fulfilled.

10 Whilst police have a duty to enforce the law when breaches are apparent and to forestall potential breaches, the priority given to this should be determined locally, taking account of 8 and 9 and the National Police Plan's other priorities. Police are of course not the sole element of law enforcement and partners – public and private – have responsibilities too.

11 Operational Commanders may well find that the most proportionate and reasonable response to breaches of the Hunting Act lays in evidence gathering with a view to subsequent prosecution as the Act confers a power to arrest, not a duty. It is a matter that should be decided at the time and location with the appropriate justification being recorded as per individual force practice.

12 Police should always be sensitive to the huge passions on both sides of the debate that led to the Act outlawing the hunting of wild mammals with dogs – other than in exempt circumstances.

13 The principal responsibility for comment on the Act now rests with Government – particularly the Department for Farming, Food and Rural Affairs - although forces may well choose to pass comment, if asked, on local implementation.

Security Classification:	**NOT PROTECTIVELY MARKED**		
Disclosable under FOIA 2000:	**Yes**		
Author:	**ACC Nigel Yeo**	Force / Organisation:	**Sussex Police**
Date Created:	**17 January 2005**	Telephone:	**01273 404003**

There are attachments to paragraphs:

As well as being posted on the ACPO Intranet this is being sent by e-mail to Public Order Liaison Officers

Association of Chief Police Officers of England, Wales and Northern Ireland

25 Victoria Street, London SW1H 0EX

Telephone: 0207 227 3411 Fax: 0207 227 3400/3401

General Policing Business Area

Public Order Working Group Lead
Nigel Yeo
Assistant Chief Constable, Sussex Police

17 January 2005

To: ACC Operations

THE HUNTING ACT 2004

National Tactical Considerations

The purpose of this note is to offer some tactical considerations for forces whilst preparing operational orders concerned with the implementation of this Act. It is not intended as a template into which forces should feel obliged to "shoehorn" their individual circumstances. It is apparent that the term "hunting" covers a broad range of activity that is significantly different across the different forces affected by this Act.

This should be seen as complementary to the Strategic Considerations document issued on the ACPO Intranet on 23 December.

In the near future, further interpretation of the Act, its powers and "points to prove" in respect of offences will be issued.

These notes have been prepared after consultation with government and both huntspeople and the legitimate protesters' organisations.

Preparing for the Act

1 At present it is advisable to prepare on the basis that the Act will come into force on 18 February. Whilst much is being made of the various legal challenges to the Act, there is no certainty that the Act will be in any way deferred and to fail to prepare would leave us all vulnerable.

2 It would help enormously to identify single points of contact in forces which will allow proper exchange of information and communication – both with ACPO centrally (me) and with some of the stakeholders who at national level are keen also to identify single points of contact within their organisations to facilitate better communication with them. I have agreed to make these available and would be grateful if forces could identify them to me – they should be at strategic (ACC Operations/Chief Superintendent Operations Department type) level and tactical (Public Order or wildlife/hunt liaison officer) level. Could this information pleased be passed to Mrs Eileen Burton on 01273 404003 or preferably by e-mail to eileen.burton@sussex.pnn.police.uk

3 Forces should seek to gather intelligence regarding the activity of interested parties to determine as far as possible what hunting groups are intending to do (drag or trail hunting, disband, disobey, dog exercising or whatever); what anti-hunt groups are anticipating doing (continue to monitor activity, change to other animal related protest, etc) and the view of any "independents" (e.g. landowners who have allowed hunting without participating).

4 It would be helpful if any public statements (e.g. to police authorities) were to take account of the strategic consideration document (ACPO Intranet 23 December) and to look at the government lines to take where appropriate , the latest of which was dated 17 December and is obtainable from Tim Mahoney at tim.mahony@cabinet-office.x.gsi.gov.uk

After the Act is in force

1 A possible scenario that police are faced with is the potential of breaches of the peace between people on different sides of the hunting issue feeling either triumphant or frustrated. Forces will need to apply the normal principles of public order policing and the conflict management model on such occasions. Indeed, I

would feel that in the immediate aftermath of the implementation of the Act, this is likely to be the greater problem, and certainly has the greatest risk to public safety.

2 It is a matter to be determined locally what priority should be given to this, set against other operational priorities.

3 It is difficult to envisage a situation in which it will be practicable for police to intercept a hunt and persons in the act of hunting – indeed to do so is likely to present considerable difficulties, both in executing such action and discharging our duty for prisoners' property (including animals). It follows then that an entirely appropriate reaction may well be evidence gathering, either by police or in statement form from members of the public, to identify offences and offenders with a view to subsequent action, whether by summons or arrest.

4 I am advised that evidence gathered by overt means by identifiable police officers will not require authorisation under the Regulation of Investigatory Powers Act (RIPA); however, covertly obtained video would. It is suggested that use of helicopters to secure video evidence would be unwise, given the risks to human health caused by frightening horses or hounds with helicopters. Equally, the viability of pursuing hunts on foot, horseback or in suitable vehicles, I would suggest is slim.

5 There is the potential for these matters to go across force boundaries, and the good practice that has existed before of inter-force co-operation would continue to be vital in this area.

6 It is possible that a tactic of those who support hunting will be to seek to get themselves prosecuted as a way of testing the law if they do not get what they desire from the current judicial processes. This may take the form of mass confessions. It is suggested that such activity should be reported and the matter considered by the local Crown Prosecution Service as to whether it passes both the evidential and public interest tests for prosecution.

7 It is worth noting that while offences under the Hunting Act carry a fine of up to £5,000, they are not recordable or notifiable under the national crime recording standards and I am also advised by Home Office lawyers that persons convicted of offences under the Hunting Act will not secure a criminal record and a unique reference number from the National Identification Bureau.

8 It may be felt reasonable and proportionate to warn hunts which we believe to be acting unlawfully, rather than seek to expend the effort in securing a prosecution but still achieving the goal of legality. A prosecution file would draw attention to this warning were it not heeded.

9 Forces should seek to ensure that their communications rooms are supplied with the "line to take" that the force has adopted, given that they are likely to receive allegations of hunting in progress from the public - not least because we can anticipate that people phoning the RSPCA will be redirected to the police.

10 It is expected that forces will receive a number of allegations from well meaning members of the public alleging that hunting is going on in contravention of the ban. We may be better equipped to deal with these if we have been able to establish from hunting groups which intend to convert to legal activity where they are – thus being able to discount well-meaning but inaccurate allegations.

11 A number of organisations who have previously campaigned against hunting such as such as Royal Society for Prevention of Cruelty to Animals (RSPCA), International Fund for Animal Welfare (IFAW) or League Against Cruel Sports (LACS), have expressed a desire to help police nationally in policing the implementation of the Act which may well be replicated locally. The RSPCA may chose to seek to act as a prosecuting authority, largely in liaison with the Crown Prosecution Service. Equally, various hunting bodies such as the Masters of Foxhounds Association (MFHA) have engaged in constructive dialogue.

12 The Countryside Alliance (CA) and Council for Hunting Associations have published on the CA website a guidance entitled Hunting Handbook 2005 which seeks to identify how hunting can be conducted with the provisions of the Act. Forces may find it advantageous to seek to identify when and where such legal activity is taking place, if only to be able to deal with well-meaning but misguided allegations of instances of contraventions of the law.

13 It can be anticipated that groups such as IFAW, who employ hunt monitors, will continue to do so. They are committed at national level to working with police to secure prosecutions relevant to anything they identify. Their hunt monitors may become witnesses, as may others. We should be mindful of their safety as with other persons attending hunts in any capacity.

14 Whilst forces may choose to try and obviate the need to seize animals, the RSPCA have declared a willingness to advise and work with forces should it be necessary.

15 Where hunting is being conducted legally within the provisions of the Act then offences of aggravated trespass would still be committed by people interfering with such activity.

16 Helpful dialogue should be possible with relevant agencies in a locality, including hunts that continue to exist but seek to act legally, legitimate organisations opposed to hunting such as those mentioned above, the Crown Prosecution Service and local landowners' representatives. It is suggested that we be frank with such groups, identifying that the police role is to enforce the law but that the implementation of the Hunting Act must be set against other operational priorities facing the Chief Constable.

17 It has been suggested and would need local confirmation that some landowners, especially institutions (such as the Forestry Commission) may close to bar all hunting (legal or otherwise) on their land – at least in the short term. Local clarification of such decisions would make sense.

18 It would seem good practice for forces to regularly refresh any community impact assessment made after implementation and also should there be any high profile cases.

17 In addition to gathering intelligence and information for the purposes of policing this activity, forces may anticipate either them or their police authorities being requested for information as to current activity. Any requests nationally will be handled by the Police National Co-ordination Centre. It is possible that forces will receive requests by letter identifying their stance and seeking explanation of their reaction to the Hunting Act - I have had several already. I would venture to suggest that additional to the points made by government, it is helpful to retain our impartiality by pointing out we will enforce the law in the context of local priorities and set against other demands on police, bearing in mind this has not been afforded high priority in the National Policing Plan, breaches of the Act are not themselves notifiable or recordable offences and not covered by national crime recording standards.

Nigel Yeo
Public Order Working Group Lead
Assistant Chief Constable

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J B H Jackson
Summit House
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FAX NO: 020 7930 9572 (Total Pages: 4)

25th January 2005

Jonathan Powell Esq
The Prime Minister's Chief of Staff
10 Downing Street
LONDON
SW1A 2AA

Dear Jonathan,

I think you need to see the enclosed copies of correspondence between Alun Michael and myself.

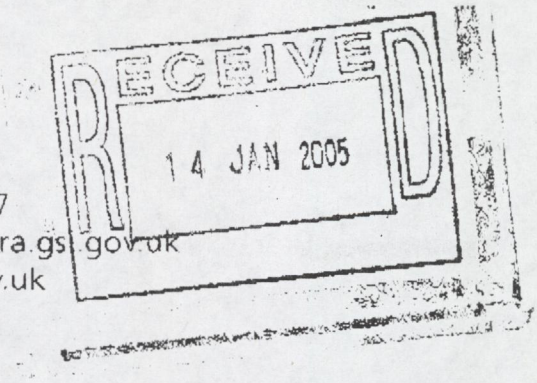
Yours sincerely,

John Jackson

Encls: AM's letter to JJ dated 11.1.05
JJ's letter to AM dated 17.1.05

Nobel House
17 Smith Square
London SW1P 3JR

Telephone 08459 335577
Email alun.michael@defra.gsi.gov.uk
Website www.defra.gov.uk



defra
Department for Environment Food and Rural Affairs

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John Jackson
Chairman
The Countryside Alliance
Summit House
12 Red Lion Square
London
WC1R 4QD

11th January 2005

From the Minister for Rural Affairs and Local Environment Quality
The Rt Hon Alun Michael MP

Dear John,

I am fully aware that you have always opposed a ban on hunting with hounds and are obviously reluctant to accept that the legislation is in place. The Countryside Alliance has made clear its intention to continue to oppose the legislation that is now on the Statute Book and you have every right to pursue all legal avenues. Therefore I am writing to you without prejudice to your legal action.

I have always said that the commencement of legislation might give rise to some animal welfare issues in relation to some horses and hounds previously used in hunting depending on the attitudes and decisions of hunts on the options open to them. Indeed the Government's proposed delay to the commencement of the Act until 31 July 2006 was intended to allow space and time to cater for any welfare issues as well as provide time for those affected to re-organise and re-focus their businesses.

However, we clearly do not have that longer period for adjustment and we need to see how those organisations with an interest in such animal welfare issues can deal with what will face those responsible for the welfare of horses and hounds. You have always expressed a view that such matters should be dealt with responsibly outside the cut and thrust of campaigning, so I am writing to suggest a meeting to discuss the practical issues. It will be open to those animal welfare organisations who have indicated a willingness to help as well as you and the organisations you represent. I shall be grateful if you will let me know who you would like to represent the Countryside Alliance in the first instance.

Yours sincerely

John

Tel: **020 7831 5775**
Fax: **020 7831 5779**
Email: **john.jackson@mishcon.co.uk**

J B H Jackson
Summit House
12 Red Lion Square
LONDON WC1R 4QD

17th January 2005

The Rt Hon Alun Michael MP
Minister of State for Rural Affairs & Urban Quality of Life
Department for Environment, Food & Rural Affairs
Nobel House
17 Smith Square
LONDON SW1P 3JR

Dear Alun,

I have received your letter dated 11th January which reached me on 14th January. I think your suggestion is singularly inappropriate. It is either an attempt at 'fig leaf' politics or you have lost touch with reality.

1) As you well know, I and my colleagues believe the Hunting Act to be a nullity in law. Do you really expect us to engage in any discussion which implies a different view until that matter has been determined by the courts?

2) I believe that hunts and others intend to keep their positions intact by regularly exercising their dogs and, if relevant, their horses. That being the case it seems that no redundancy of dogs and horses arising from the situation you have created is in prospect.

3) The people that you have in mind are well accustomed to looking after the welfare of their animals diligently and seeking professional help should they need it. The idea of national consultation, particularly under your sponsorship, in those circumstances will strike people, as it strikes me, as unwarranted interference in matters they understand very well.

I have some further comments to make on your letter. I have never said that 'how organisations with an interest in animal welfare issues can deal with what will face those responsible for the welfare of horses and hounds' is a matter which should be dealt with outside the 'cut and thrust' of campaigning. I have said, and now repeat, that the hunting question should be addressed in a non-adversarial way by people who know what they are talking about and primarily in the context of responsible wildlife management and the need to have good enforceable law in respect of cruelty to wild animals. Please do not put words into my mouth.

That reminds me of another point. You have persisted in accusing Anne Mallalieu, President of the Countryside Alliance, of sabotaging the Government's proposed delay to the commencement of the 'Act' by arguing, and voting, against it in the House of Lords. You know perfectly well that you were engaged in a shabby attempt to avoid the risks inherent in a use of the Parliament Act (whilst maintaining the threat of its use) by offering the 'bribe' of delay in return for acceptance of a Bill to which a

massive majority in the House of Lords was strongly opposed. No person of decency or conscience could have accepted your proposal: nor, in my view, would a person of decency or conscience have made it. You were not motivated by the considerations you refer to in your letter: those who also see a connection with the date of the next election may have a point.

You may have forgotten that you disclosed the possibility of such a ploy to me some fifteen months ago. I told you then that it was 'squalid', a description that I amended recently to 'corrupt'. Your disingenuous and deeply resented attacks on Lady Mallalieu and many other ill considered remarks are highly inflammatory and add to the burden of those of us who are trying to ensure that the response to the awful mess you have made is measured, lawful and disciplined.

As is now my custom, I am placing your letter to me and my reply on the Countryside Alliance website.

Yours sincerely,

John Jackson
Chairman
Countryside Alliance

- No policy on Diaries / Meetings - Cabinet

- House authorities say

Julian meeting:-

DCMS - Ronnie Bridget

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FAX NO: 020 7930 9572 (Total Pages: 2)

24th January 2005

Jonathan Powell Esq
The Prime Minister's Chief of Staff
10 Downing Street
LONDON
SW1A 2AA

Dear Jonathan,

As you already know, there will be no sensible opportunity for an application for interim relief to be made until the Court of Appeal has given judgement. An application could then be made, on the assumption that leave will be given for a further appeal by either side to the House of Lords. Our legal team is uneasy about the Court's reaction to an application. You may have seen a rather aggressive letter in today's Daily Telegraph by a "neutral" observer.

Our team has pointed out again that there is an alternative route. Their argument runs roughly as follows:-

1. In view of the proposal endorsed by the House of Commons, there is a mandate for the government to "suspend" the operation of the Act until July 2006.

2. Instead of relying on an order of the Court, this could be done through a Court process involving an undertaking by the Attorney General.

3. Such an undertaking could be given in respect of both cases – the Parliament Act case and the Human Rights Act case (which will commence very shortly).

4. The undertaking could be phrased so as not to constitute a disregard of the House of Commons' "will". The agreed terms could, for example, read as an undertaking "not to investigate or prosecute any alleged breach of the Hunting Act 2004 until July 2006 or final judgement in the two cases – whichever is the sooner".

I understand the political difficult in this proposal but it does avoid the Court having to take a decision – an unfavourable decision could be embarrassing all round. Things

response of Tony Banks ("the House of Commons said it would wait until July 2006") to what was done then does seem to me to be of considerable relevance.

I will be writing to you later this week on the proposed private meeting. A "final term" does give a national leader an historic opportunity to undertake great visionary and badly needed reforms.

Best wishes

Yours

John Jackson

I am worried about this. Let us speak.

From: Kate Gross
Date: 20 January 2005

PRIME MINISTER

cc: Jonathan Powell, Sally Morgan, David Hill, Pat McFadden

HUNTING COURT CASE

The CA challenge to the Hunting Act is being heard before Justice Collins on Tuesday. The Attorney is representing the Government.

Skeleton arguments have now been submitted to the Courts. There is nothing new in the Countryside Alliance argument. They are challenging the Hunting Act on the basis that the Parliament Act, under which it was passed, is invalid. This is based on the argument that the Parliament Act 1911 could not be used to amend itself (as was done by the Parliament Act 1949) to reduce the number of times a Commons proposal would need to be rejected by the Lords before it could be enacted without the consent of the Lords. The Government response is robust on the validity and application of the Parliament Act (to protect the Government's right to use the Parliament Act in the future) and rightly silent on the issue of hunting.

The Court have scheduled two days for the hearing. We expect it will be over by Wednesday lunchtime. The Court will then hand down its judgement by Friday. The AG remains confident that the Courts will reject the CA's case. However if they do find in favour of the CA then the AG advises that the Govt should appeal, because of the importance of (a) previous legislation passed under the Act, and (b) upholding the principle of Parliamentary sovereignty. **Agree?**

Appeal
The Court of Appeal have now indicated that they intend to expedite an appeal hearing (presuming that either side would appeal if they lost) to decide the case before the ban comes into force on 18 February. They have given an indicative date of 8 February. The Attorney advises that there is little we can do about this without facing charges of interfering with Court proceedings.

Interim relief
We had expected the question of interim relief to be dealt with directly after the initial hearing on 28/1. However, if the Court of Appeal hear the case before 19

February, as they have said they will, the question of interim relief only comes into play once the Court of Appeal have ruled. Assuming that either side would appeal to the House of Lords, and that the HoL would not be able to hear that case before 19 February, the CA would then be able to apply to the Court of Appeal for interim relief. The Government position would remain as it was before: neutral. The only difference is that the chances of the Court of Appeal granting interim relief are slim, given that they will have already have upheld that the Hunting Act is a valid act of Parliament.

If the Court of Appeal refuse interim relief, the CA are then able to apply to the HoL for an injunction. However the chances of a Court granting interim relief diminish at each stage, as it becomes clearer and clearer that the legal arguments have little merit.

League against Cruel Sports

The League Against Cruel Sports applied for and were granted permission to intervene in the case, on the basis that they wanted to oppose the grant of interim relief. John Jackson has said that he thinks the League's intervention lessens the chances of the Court granting interim relief at any stage. The Attorney advises the Courts would probably have ensured that the arguments against interim relief were heard whether or not the League intervened, and if necessary by appointing an Advocate to the Court. Speaker's Counsel was also suggesting that the House Authorities might have intervened on this point as they were unhappy with the Government's decision not to oppose interim relief. Overall, the League's intervention makes it only slightly less likely that the Court will grant interim relief: and if the arguments were going to be heard anyway, presentationally it seems better that they come from a body which has always opposed any delay to implementation of the Act than from the House Authorities or a Govt lawyer.

Press handling

I attach some draft press lines. Whilst the CA, the League and others will no doubt try and hype up the case and its links to the hunting ban, the AG wants to be clear that Tuesday's case rests on the strength of the Parliament Act (not the merits or otherwise of hunting).

Kate Gross

KATE GROSS

Hunting

Legal challenge

- The Countryside Alliance's challenge to the Hunting Act is being heard in the High Court [today]. The Attorney General is representing the Government. The court have allocated two days for the initial hearing. We expect a verdict on Friday.
- The Government believes that the Alliance's challenge, on the strength of the Parliament Act, is not valid. The Government will defend its position robustly [the Attorney's skeleton argument will as usual be available to journalists from Tuesday if they are interested in the detail].
- The Government does not expect to lose the challenge. However, if we do, we are likely to appeal.

Injunction

- As is normal, lawyers from both sides spoke to each other in advance of Tuesday's initial hearing. During these discussions the Countryside Alliance said that if they lose their case – as we expect them to – they would apply for an injunction which would suspend the Act whilst they appeal. The Govt has said that it would not oppose such an injunction, but it is for the Courts to decide.
- Govt position remains clear: **a delay before the introduction of the ban would be sensible to give Hunters time to adjust, and to reduce uncertainty whilst the case goes through the Courts**. This is what the PM proposed in September and what the majority of MPs in the House of Commons voted for.
- The Government is clear that issue must be resolved in the courts swiftly in order to give certainty to all parties. There can be no place for law-breaking or civil disobedience.
- The question of an injunction applies only to the Parliament Act challenge. The Countryside Alliance have said that they are also likely to challenge the Act on Human Rights grounds, if their first challenge fails, but the question of an injunction would not be relevant here. The current challenge is based on the alleged invalidity of the Parliament Acts, and if successful, would result in a declaration of invalidity in relation to the Hunting Act. A challenge based on the Human Rights Act would, even if successful, only result in a declaration of incompatibility. There are other instances of Acts of Parliament being challenged in relation to the Human Rights Act. There is no precedent and no reason for an injunction to be granted

suspending the relevant enactment for the duration of such a challenge.

Appeal [if the Court of Appeal confirm they will hear the case before 18 February]

- Clear that it is right that the Courts seek to reach a position of clarity on this case before the Act comes into force on 18 February, in order that people have certainty.
- The Government position on the question of interim relief – whenever it arises – remains the same. If the case, and the process of appeal, have not been fully exhausted then we would not oppose interim relief, for all the reasons stated above.

General lines

- The Govt has searched hard for a compromise over hunting, which so clearly divides people. We have had 7 years of Parliamentary debate and now 10 votes in the last 10 years, in which MPs have voted overwhelmingly for a ban on hunting. Govt did all it could to persuade hunt supporters and opponents to reach agreement: but unfortunately neither side would compromise. So the will of the elected House of Commons prevailed.
- The Government did not force the Hunting Act through Parliament. The Parliament Acts were applied automatically by the Speaker of the House of Commons after the House of Lords failed to pass the measure down for the second time in 2 years
- Govt will not be paying compensation to hunters, though it will be offering support and advice, through DEFRA and job centres, to help ex-hunters to find alternative livelihoods.
- The report of the Burns Commission found that the impact of the ban on the rural economy will be minor, but there is likely to be some impact on individuals and at a local level in some areas. Hope that very few people will lose their jobs as a direct result of the hunt ban.

Enforcement

- ACPO will be developing detailed guidance for police which deals both with the practicalities of enforcement and sensible measures which can be taken to prepare for the commencement of the ban. ACPO have already indicated that they will want to undertake a programme of education and advice in advance of the ban coming into force, focusing on constructive discussions with masters of the

hunt which seek to promote legal alternatives such as drag hunting, and the Home Office is extremely supportive of this commonsense approach.

PM I/V 6/1/05

INTERVIEWER:
And finally if I may, a question on hunting. Have you bitten off more than you can chew with a ban on hunting because hunt supporters are adamant they are going to carry on regardless?

PRIME MINISTER:
Well there is a court case now that will happen, we will have to wait and see what the result of that court case is.

INTERVIEWER:
And that takes the heat off through for the general election campaign does it?

PRIME MINISTER:
Well I have no doubt it will be an issue in the general election, whatever happens frankly, because people feel very strongly on both sides of the argument. As you know, I wanted a compromise on this issue that would have allowed hunting to continue under licence, but that is water under the bridge, it didn't happen. But I think what is important now is that this will be decided by the courts, that will obviously take some time, and I think it is important that people again behave responsibly on both sides.

Duty Clerk - Desk -

From: Kate Gross
Sent: 12 January 2005 14:37
To: 'Secretariat - MOS (Rural Affairs) (Secretariat)'
Cc: Paul Brown; 'debbie.gibson@homeoffice.gsi.gov.uk'; Matrix Filing
Subject: Hunting leaflet

Alun,

I discussed DEFRA's leaflet on hunting with the Prime Minister this morning. He was content with the compromise you put to me yesterday (i.e. that DEFRA would place the material from the leaflet on their website, and use it in response to queries, but not at this stage physically distribute the leaflet or use it proactively).

I think we'll need to consult him again, after the initial hearing on 25/1, before you distribute the leaflet.

Hope this is ok

Kate

Debbie: copied to HO for information only

Duty Clerk - Desk -

From: Kate Gross
Sent: 20 December 2004 17:35
To: Matrix Filing
Subject: FW: HUNTING LEAFLET - URGENT

-----Original Message-----
From: Kate Gross
Sent: 20 December 2004 17:35
To: Paul Brown; Jonathan Powell; David Hill
Subject: RE: HUNTING LEAFLET - URGENT

Spoke to Alun and relayed PM's view that this should not be published until after the new year. Alun reluctantly agreed, but you can expect a bid to do it in the w/c 10 January.

-----Original Message-----
From: Martin Hurst
Sent: 20 December 2004 16:26
To: Kate Gross
Subject: FW: HUNTING LEAFLET - URGENT
Importance: High

-----Original Message-----
From: Paul Brown
Sent: 20 December 2004 14:25
To: 'Sainsbury, Martin (CD)'
Cc: Clarke, Gary; Fildes, Paul; 'martyn.smith@defra.gsi.gov.uk'; Martin Hurst
Subject: HUNTING LEAFLET - URGENT
Importance: High

MARTIN

Thanks for sending this over. I have consulted colleagues. We would be grateful if you would DEFER publication until further notice in the New Year. If the minister or Martyn want to come back on this, David Hill is the person to talk to.

PAUL