**EXPLANATORY MEMORANDUM TO**

**THE HUNTING ACT 2004 (EXEMPT HUNTING) (AMENDMENT) ORDER 2015**

**2015 No. [XXXX]**

**1.** This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 The draft instrument amends certain exemptions under Schedule 1 to the Hunting Act 2004, in particular (and consistently with the law in Scotland under the Protection of Wild Mammals (Scotland) Act 2002), to allow for more than two dogs to be used in stalking or flushing out wild mammals for the purpose of shooting them, thereby providing greater flexibility for the shooting of foxes (or other wild mammals), as well as for the exemptions for the purpose of rescue or research. It is anticipated that this increased flexibility is most likely to be of benefit in upland terrain.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

## 4. Legislative Context

4.1 The Hunting Act 2004 (the Act) came into force on 18 February 2005. The Act bans all hunting with dogs of wild mammals in England and Wales, except where it is carried out in accordance with an exemption set out in Schedule 1 to the Act. The Act covers the hunting of any wild mammal including fox, deer, hare and mink, and also bans hare coursing.

4.2 The exemptions currently allow hunting activities to take place in limited circumstances and with the consent of the occupier or owner of the land, such as:

- stalking and flushing out wild mammals with up to two dogs;
- using a single dog underground to flush out wild mammals, such as foxes, in order to protect birds kept for shooting;
- recapture of a wild mammal;
- rescue of a wild mammal which is, or is believed to be, injured with up to two dogs;
- research and observation, where hunting (with up to two dogs) is undertaken for the purpose of or in connection with the observation or study of the wild mammal;

- the retrieval of hares which have been shot; and
- to allow for ratting and rabbiting.

4.3 Section 2(2) of the Act allows the Secretary of State, by order, to vary the exemptions in Schedule 1. Such an order may only be made after it has first been approved in draft by each House of Parliament.

## 5. Territorial Extent and Application

5.1 This instrument extends and applies to England and Wales.

## 6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Environment and Rural Affairs, Rory Stewart, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Hunting Act 2004 (Exempt Hunting) (Amendment) Order 2015 are compatible with the Convention rights.

## 7. Policy background

7.1 Section 2(2) of the Act allows the Secretary of State, by order, to vary the exemptions in Schedule 1 to the Act. Such an order may only be made after a draft of it has been approved by affirmative resolution of each House of Parliament.

7.2 The purpose of this order is to amend certain exemptions in Schedule 1 to the Act to increase the number of dogs that can be used to stalk or flush out wild mammals, where this is appropriate having regard to the terrain and any other relevant circumstances, as well as for the hunting of wild mammals for the purposes of rescue or research. The order also makes an amendment to allow the use of a dog below ground to prevent and reduce serious damage to livestock, in addition to the current exemption which allows such use for the prevention of serious damage to game birds or wild birds kept for shooting. The amendments also extend the scope of the "rescue" exemption so as now to include "diseased" animals; and in the context of the exemption for using a dog underground, they remove the requirement for evidence of ownership of the land on which the activity takes place (or landowner's permission) to be produced immediately on request by a constable, and instead specify an alternative period of 7 days for the production of such evidence.

7.3 The order includes a review clause as required by section 28(2)(a) of the Small Business, Enterprise and Employment Act 2015, which creates a duty on Ministers making or amending certain secondary legislation to provide an assessment after 5 years from the commencement date of the extent to which the original objectives of the

regulation have been achieved, whether they remain appropriate, and (if so) whether they could be achieved in a less burdensome way.

## 8. Consultation outcome

8.1 A full stakeholder consultation exercise was carried out during the passage of the Hunting Act 2004, which included three days of hearings between 9th and 11th September 2002 at Portcullis House.

8.2 Since 7th May 2015, Defra has received a variety of representations on the Act but the department has not consulted on these specific measures. This is because the measures do not affect the limited purposes of the exemptions, with the one exception of the exemption relating to the use of a dog below ground (which would in future be additionally available where the purpose of such use was to prevent serious damage to livestock). Nor do they affect the conditions relating to keeping the dogs under control and shooting the animal dead as soon as possible. They also do not affect the law of hunting in the traditional sense of riding to hounds; and they amend the Act in a way which is no less restrictive than the law in Scotland.

## 9. Guidance

9.1 The existing legal Code of Practice for use of a dog below ground in England and Wales will be updated in light of the amendments to the exemption set out in Schedule 1 of the Act.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be insignificant.

10.2 The impact on the public sector is minimal, given that the police will continue to enforce the Act.

10.3 An Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

11.1 To minimise the impact of the requirements on businesses employing up to 20 people, the approach taken is to enable farmers and gamekeepers to make a judgment as to the number of dogs required themselves, rather than being restricted to two. This will bring the situation for farmers and gamekeepers in England and Wales into line with that in Scotland.

## 12. Monitoring & review

12.1 The order includes a review clause as required by section 28 of the Small Business, Enterprise and Employment Act 2015. The Secretary of State will therefore provide an assessment after 5 years from the commencement date of the extent to which the original objectives of the regulation have been achieved, whether they remain appropriate, and (if so) whether they could be achieved in a less burdensome way. Further reviews are required at five yearly intervals.

## 13. Contact

Department for Environment, Food and Rural Affairs, SIs@defra.gsi.gov.uk, can answer any queries regarding the instrument.