

BASC Code of Practice for the Use of a Dog Below Ground in England and Wales

Ministerial Foreword

The Government accepts that pest control on shoots is necessary to ensure that serious damage to game birds or wild birds is minimised. All such control must, however, be carried out within the law and in a manner that ensures that every effort is made to reduce suffering either to the wild mammal or to the terrier used to flush it. The Government recommends that consideration should be given to the full range of non-lethal and lethal alternatives before a decision is made to use a dog under ground in this manner.¹

The Hunting Act 2004 prohibits all hunting of wild mammals with dogs in England and Wales, except where it is carried out in accordance with one of the tightly drawn exemptions which allow for certain necessary pest control and other activities to be undertaken subject to strict conditions.

One of these exemptions (paragraph 2 of Schedule 1 to the Act) allows the use of a single dog below ground for the purpose of preventing or reducing serious damage to game birds or wild birds which a person is keeping or preserving for the purpose of their being shot. It includes a requirement that the manner in which the dog is used complies with any Code of Practice which is issued or approved by the Secretary of State.

The Code of Practice included in this document, which has been produced by the British Association for Shooting and Conservation (BASC), has been duly approved by the Secretary of State for the purpose of paragraph 2 of Schedule 1 of the Hunting Act 2004 and is, therefore, the Code of Practice which must be observed under this exemption until further notice.

In addition to the Code of Practice, this document contains three annexes:

- a Good Practice Guide, also produced by BASC;
- a summary of the terms and conditions of paragraph 2 of Schedule 1 to the Hunting Act 2004 (which is widely known as “the gamekeepers’ exemption”); and
- an example of the type of permission which anyone intending to rely on this exemption should carry with them when undertaking terrier work.

Unlike the Code of Practice, the Good Practice Guide annexed to this document does not have the force of law. However, it is drawn from BASC’s own wide range of professional experience and expertise in this field. Defra is, therefore, content that it represents a sound basis for carrying out the activities allowed under the exemption and the approved code and that observing it is a good indicator of a person’s commitment to responsible gamekeeping.

The Rt. Hon. Alun Michael, Minister of State for Rural Affairs and Local Environmental Quality.

¹ Defra’s Rural Development Service is publishing a Technical Advice Note (TAN 43) on Fox Problems in Rural Areas setting out the range of options.

THE CODE OF PRACTICE

Introduction

1. The Code of Practice set out below has the force of law. It sets out the manner in which a dog may be legally used below ground in the course of stalking or flushing out a wild mammal in accordance with paragraph 2 of Schedule 1 to the Hunting Act 2004 (so long as the other conditions in the exemption are also met).
2. Failure to comply with the conditions of the exemption or with the Code set out below will mean that the use of a dog below ground to hunt wild mammals is no longer exempt hunting and will therefore be a criminal offence which may result in prosecution and a fine of up to £5,000. Failure to observe this Code may also lead to disciplinary action by organisations endorsing this code, and this may result in expulsion, consequential loss of shooting insurance and professional opportunity.
3. The Code of Practice is supported by a Good Practice Guide. While not having the force of law, this Guide covers a range of activities which are compatible with the Act and this Code, and compliance with the Good Practice Guide might be relevant to whether activity has been undertaken in accordance with the Code.
4. Although the commonly used terms “terrier” and “terrier work” are used in this Code they should be understood as referring to any type of dog and to any use of a dog below ground.
5. All relevant animal welfare and other legislation must be observed by anyone intending to rely on this Code and the exemption. By law, only one terrier can be used in an earth at any one time.

The Code

6. The following principles must always be observed when a terrier is used below ground to stalk or flush out a wild mammal:
 - The terrier's role must be to locate the wild mammal underground and cause it to 'bolt' (leave the earth or den) as soon as possible so that it can be shot by a competent person and humanely dispatched. It should not be intended that a terrier will fight the wild mammal.
 - Only terriers that are 'soft' (those that habitually stand off and bark at the wild mammal) must be used. Terriers that are 'hard' (those that habitually fight) must not be used.
 - Care must always be taken to ensure the safety of those involved and to minimise the risk of injury to either the wild mammal or terrier during the bolting process.
 - The terrier's time underground should be kept as short as possible so as to minimise any potential distress to the wild mammal.
 - The terrier being used must always be fitted with an electronic locator so that its exact position underground can be tracked.
 - Once it is determined that a terrier has become trapped assistance must be given to release it.

Approved for the purpose of paragraph 2 of Schedule 1 to the Hunting Act 2004 by the Secretary of State for Environment, Food and Rural Affairs on the 17th February 2005

BASC Good Practice Guide

1. This Good Practice Guide has been drawn up by BASC in support of the Code of Practice. Fox control on shoots is necessary to ensure that serious damage to game birds or wild birds, which a person is keeping or preserving for the purpose of their being shot, is prevented, reduced or kept at acceptable levels. This is especially so at times when birds are vulnerable when nesting or rearing young. All control must be carried out within the law and by a competent person in accordance with the relevant codes of practice² so as to ensure that every effort is made to reduce suffering.
2. Before deciding the most suitable method, consideration will - on the strength of local experience - be given to the circumstances, terrain, other wildlife and public safety. Fox control should always be carried out with due consideration to people living locally and other countryside users.
3. There are circumstances where, by virtue of public safety, avoidance of risk to other wildlife and practicality, it is preferable to use an experienced terrier to locate a fox in its earth and enable it to be killed humanely.
4. Night shooting with a centre-fire rifle from a vehicle with a spotlight or shooting during the day from a high seat are alternative methods of control and should be considered. However, they are not always practical due to the difficulty of the terrain, the proximity of dwellings or public access. Consider using a sound moderator for both rimfire and centre-fire rifles particularly in sensitive areas close to human habitation or livestock. Sound moderators also give additional hearing protection when used in conjunction with ear defenders.
5. Consideration should be given to destroying any known artificial earths as these would encourage pests.

Despatch of orphaned cubs

6. The law does not allow a terrier to be used underground to despatch orphaned cubs.

Bolting foxes

7. A rifle should not be used to shoot a running fox. Always use an appropriate shotgun and ammunition (*see below*). A fox bolted in open country may stop and look back after running a short distance. It may be prudent to have a centre-fire rifle available for this eventuality but always ensure that the shot is safe. Air rifles are unsuitable for fox control and .22 rim fire rifles should only be used at short ranges up to 30 metres.
8. No obstacle other than nets should be used to prevent a fox from bolting or escaping after bolting. Great care should be exercised when using nets. While nets do have potential benefits in terms of allowing for a quick, clean and humane kill, it is possible that they could deter the fox from bolting and might lead to the possibility of a fight underground.
9. When shooting:
 - Always ensure that you know where everybody else is located and the field of fire is completely safe.

² See The Code of Good Shooting Practice and BASC's Lamping (night shooting) and Fox Snaring Codes or other relevant codes produced by BASC from time to time - www.basc.org.uk

- All participants must be given detailed instructions about what is likely to happen and instructed not to move from their post until told that is safe to do so.
- An additional safety margin must be allowed, especially in rocky or wooded terrain, if there is danger of ricochet.
- Do not shoot the fox until it is clear of the entrance to the earth to ensure that the terrier is not in the field of fire.
- Results from research by BASC show that the use of a 12 bore shotgun with No 1(3.6mm) or No 3 (3.3mm) shot at twenty and thirty yards results in more than 90% instant kills or humanely dispatched animals.
- If there is any doubt then you must not fire. Always shoot within your capability, with a correct gun-cartridge combination, and when you feel entirely confident that the fox will be killed humanely. It is your responsibility to ensure a clean kill.

If in doubt do not shoot!

Completion of work

10. Once the work is completed:

- Dead foxes must be disposed of according to the law either by burying at a depth beyond the reach of a carnivorous animal or by incineration.
- Dead foxes must not be displayed as no useful purpose is served and others may be offended.
- You should complete a contemporary log of the fox control work as you do it, including the location, method and results.

The welfare of your terrier

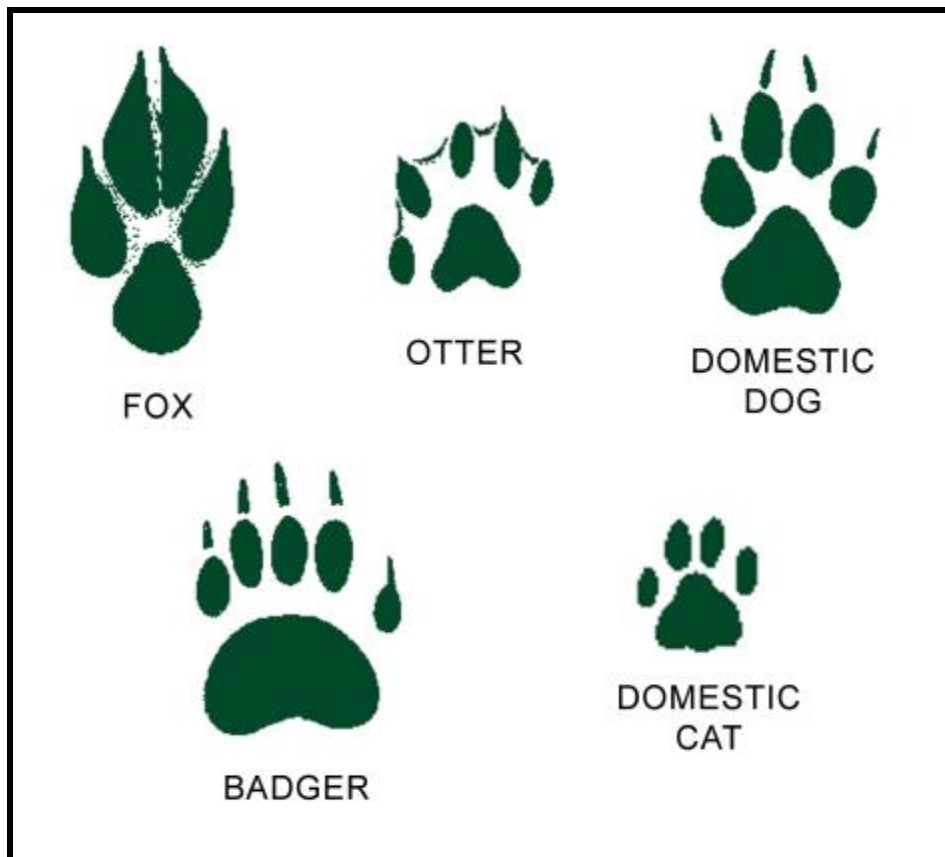
11. The following points must be borne in mind in relation to your terrier:

- The health and welfare of your dog must be given priority (See BASC Gundog Code of Practice).
- Check your dog regularly whilst working for any small cuts e.g. from roots or stones that should be treated immediately. Where other injuries occur you should seek treatment from a qualified vet.
- Depending on the circumstances, in the event of your dog becoming trapped underground you may dig down solely for the purpose of rescuing your terrier. On completion of digging all ground must be backfilled and left as it was found. Particular attention must be given to the safety of workers using heavy equipment as well as to livestock which may use the land surrounding the earth.
- Always have a dog first aid kit available.

- Make sure your dog has access to water especially on warm days.

The welfare of other animals

12. All reasonable precautions should be taken to ensure that the act of using a dog below ground will not adversely affect any wild mammal that is not the target of the action.
13. Various wild mammals, such as badgers, otters and pine martens, are specifically protected by law, while all wild mammals are protected by the Wild Mammals (Protection) Act 1996 and the Hunting Act 2004. These legal requirements must be complied with at all times, and you should take all necessary steps to ensure that you have a proper knowledge of the relevant law before undertaking any activity involving wild mammals.
14. For example, it is illegal under the Protection of Badgers Act 1992 wilfully to kill, injure or take, or attempt to kill, injure or take a badger. A person is guilty of an offence if they interfere with a badger sett. This includes damaging any part of it, destroying, obstructing access to, causing a dog to enter or disturbing a badger in its sett.
15. Before the terrier is entered the earth or den must be closely examined to ensure that, so far as can reasonably be determined, only foxes are using it. If the hole or tunnel shows any sign of badger activity or any other protected species such as pine martens or otters then a terrier must not be entered. Pine martens will occasionally use vacated badger setts and otters will occupy rocky clefts or tunnels in peat.
16. You must be familiar with the following tracks before conducting terrier work:



Badger presence is evidenced by:

- Signs of excavation linked by well defined paths
- Badger tracks
- Signs of bedding near the sett entrance
- The presence of dung pits

Entering the Terrier

17. When entering the terrier, the following points should be borne in mind:

- Respect for both the fox and terrier is paramount.
- If the earth's hole and tunnel network is unstable, or would be rendered unstable by digging, a terrier must not be entered. If, during the course of terrier work, there is any reason to believe that the network is or has become unstable, then the terrier must be removed as quickly as possible.
- Some earths, or dens, particularly those with a single entry hole, may encourage fighting because the fox cannot bolt and can compromise easy recovery and therefore the safety of your terrier. In these circumstances, a terrier should not be entered.

Written evidence

18. In England and Wales, the Hunting Act 2004 requires anyone wishing to rely on the exemption allowing the use of a dog below ground for the protection of game and wild birds kept for shooting to carry written evidence of their ownership of the land, or of the permission of the owner/occupier of the land to be conducting terrier work on that land. This evidence must be made immediately available for inspection by a constable who asks to see it. Failure to carry and produce such evidence can result in a prosecution under the Hunting Act 2004.

19. An example of evidence of ownership or occupation would be a recent utility bill which is relevant to the land where the terrier work is undertaken. An example of the type of permission which anyone wishing to rely on the exemption might wish to carry is given in Annex C.

The 'Gamekeepers' Exemption' – Paragraph 2 to Schedule 1 of the Hunting Act 2004

This exemption sets out the limited circumstances in which a dog may be used below ground to protect birds kept for shooting without the commission of an offence of unlawful hunting. The following conditions must be satisfied:

- the stalking or flushing out must be undertaken for the purpose of preventing or reducing serious damage to game birds or wild birds which are being kept or preserved for shooting;
- the person doing the stalking or flushing out must carry written evidence either that the relevant land belongs to him or that he has been given permission to use it for that purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs. This evidence must be shown to a police constable immediately on request;
- only one dog may be used below ground at any time to stalk or flush out a wild mammal;
- reasonable steps must be taken to ensure that as soon as possible after being found the wild mammal is flushed out from below ground;
- reasonable steps must be taken to ensure that as soon as possible after being flushed out from below ground the wild mammal is shot dead by a competent person;
- the dog used must be brought under sufficiently close control to ensure that it does not prevent or obstruct the shooting of the wild mammal;
- reasonable steps must be taken to prevent injury to the dog; and
- the manner in which the dog is used must comply with any Code of Practice approved for the purpose of this exemption by the Secretary of State.

For these purposes "game bird" and "wild bird" have the meaning given in section 27 of the Wildlife and Countryside Act 1981 (as amended by the Wildlife and Countryside Act 1981 (England and Wales) (Amendment) Regulations 2004), which provides that "game bird" means "any pheasant, partridge, grouse (or moor game), black (or heath) game or ptarmigan" and "wild bird" means "any species which is ordinarily resident in or is a visitor to the European territory of a member State [of the EU] in a wild state but does not include poultry . . . or any game bird."

Form of permission to conduct terrier work on a shoot

I,

(name)

am the owner/occupier of

(name of land)

give permission to

(name)

to use a dog below ground in accordance with the law on my land for the purpose of preventing or reducing serious damage to game birds or wild birds being kept or preserved for the purpose of being shot.

This permission relates only to the use of a dog in the following location(s):

(insert details of the areas where this activity is to take place, eg field or copse names, OS grid references etc)

Signed

Date

Address

Telephone Number