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LEGAL SERVICES
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9300

2015-11-30

All Cluster Commanders
All Station Commanders
Free State Province

ILLEGAL HUNTING WITH DOGS ON FARMS

1. During the past year reports have indicated that there has been an increase in incidents of illegal hunting with dogs in the province, especially on farms. In light of this increase and pursuant to a request from Free State Agriculture, this office has been requested to set out the applicable legislation relating to offences and powers of the SAPS in respect of illegal hunting with dogs.
2. Persons who enter with a pack of dogs on a farm on which game or livestock is present, are creating a serious threat to the lives and safety of such game or livestock. There are several pieces of legislation applicable to the entering upon and hunting / killing animals on farms without permission of the owner of the farm, as well as related offences.
3. The most obvious offence which is being committed is **trespassing**. In terms of the **Trespass Act no. 6 of 1959**, a person is guilty of an offence if he enters or is upon land **without the permission of the lawful occupier or the owner or person in charge of the land**. If a land owner has informed all his employees that no-one may be given permission to enter the land with dogs or to hunt on the land, such an employee may not give lawful permission and will be guilty as a conspirator in the illegal hunting on the land.

4. Section 42(1) of the **Criminal Procedure Act no 51 of 1977** determines that **a private person may, without a warrant, arrest a person who commits or attempts to commit, or whom he reasonably suspects of having committed an offence referred to in Schedule 1.**

Trespassing is a Schedule 1 offence due to the fact a **sentence of more than six months without the option of a fine** may be imposed upon conviction. **A land owner (or person in his employ), may therefor arrest any person who trespasses the land without permission.**

Section 42(2) determines that the **owner, lawful occupier or person in charge of property on or in respect of which any person is found committing any offence, and any person authorised thereto by such owner, occupier or person in charge, may also, without a warrant arrest the person found committing the offence.**

This latter subsection empowers the owner, etc. of land, to **arrest a person for any offence if the offence is committed on such land.** This will include minor offences or offences which carries a lighter sentence than six months imprisonment.

5. Another offence which may be committed by persons entering upon land or being upon land with the purpose to hunt animals without a permit, will be **malicious damage to property.** Malicious damage to property is committed when a person **unlawfully and intentionally damages movable or immovable property belonging to another.** The **damaging of fences or gates as well as the injuring or killing of an animal** belonging to the landowner, will fall within the scope of this offence.

Once again, **arrest in terms of section 42(2) be applicable, as referred to in paragraph 4 supra.**

6. The **Free State Nature Conservation Ordinance no. 8 of 1969, prohibits the hunting of ordinary game with dogs.** Section 4.2 of this Ordinance determines that **no person shall hunt ordinary game, unless-**

- (a) he is the **holder of a licence** issued in accordance with section 37(2) which authorised him to hunt ordinary game; and
- (b) he hunts **under direct supervision of the owner of the land** on which the hunt is carried out or he carries with him the written permission of such owner, containing the prescribed particulars, while he hunts.

Section 9 of the Ordinance prohibits the hunting of wild animals with a dog, except if authorised by means of a permit. (Note that dogs may be used in the lawful hunting of birds or in pursuit of a wild animal wounded at a lawful hunt.)

In terms of section 39(3), **an authorised officer (which includes nature conservation officials and police officials), may destroy any dog which is pursuing or in search of any game on any land, if such dog is not used in a lawful hunt.** The wording of this section indicates that the dog **must be pursuing or be in search** of game on land at the time when it is destroyed / shot. This section **only applies to game and not livestock or other animals.**

An authorised officer may also, in terms of section 39, **seize anything which may, in his opinion, afford evidence of a contravention** of a provision of this Ordinance (for instance the dogs used in the hunting, whistles or other instruments to direct or control the dogs during a hunt, animals which have been killed during a hunt, etc.)

7. The **offences** in terms of the Ordinance are set out in section 40 and includes the **contravention of or failure to comply with any provision of this Ordinance and the hindering or obstruction of the owner of land or an authorised officer in the exercise of any power in terms of section 39** (seizure of evidence, destroying of a dog used for illegal game hunting).

The penalty for contravention of section 40 offences mentioned above, is a fine not exceeding R20 000,00 or imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

8. The **offences in terms of the Ordinance** are therefore, in light of the penalties, **Schedule 1 offences and arrest without a warrant by a private person will be lawful**, as explained in paragraph 4 supra.
9. Section 2(1)(g) of the **Animals Protection Act no. 71 of 1962** also makes provision for an offence related to illegal hunting with dogs. This section determines that **any person who incites or provokes an animal to attack another animal, shall be guilty of an offence.** The penalty upon conviction for this offence is a fine of maximum R4 000,00, or, upon failure to pay, imprisonment for a maximum period of 12 months, or both such fine and such imprisonment.

The owner or occupier of land or person in charge of land may arrest a person who commits this offence in his presence (see par 4 supra).

10. The **Stock Theft Act no. 57 of 1959 and the Game Theft Act no. 105 of 1991** have similar provisions in regard to persons entering land with the intent to steal stock or game. **Section 4 of the Stock Theft Act** determines that a **person entering land enclosed on all sides with a fence or a kraal, shed or stable or other walled place with the intent to steal stock or produce, shall be guilty of an offence.** In terms of this section, the **onus shall be on the person charged with the contravention to prove that he had no intention**

to steal any stock or produce, unless he was found proceeding along a road or thoroughfare traversing such land.

In terms of section 3 of the Game Theft Act, a person **entering land with the intent to steal game thereon or to disperse game from that land, shall be guilty of an offence.** This section also determines that, if it is proved that the accused in such an offence, **wrongfully and unlawfully entered another person's land upon which there is game** or that he wrongfully and unlawfully dispersed or lured away game from such land, **it shall be presumed that he had the intent to steal game** or to disperse or lure away the game from the land, unless the contrary is proved.

If a person **enters fenced land without permission of the owner, with a number of dogs, it already indicates that he is there to hunt / catch / kill some animals on the land in question.** If there is livestock or game land, there will be **sufficient circumstances to form a suspicion that the person is there to kill the livestock or game on the land.** The onus will be on the **owner of / person accompanying the dogs, to prove that he was not on the land to kill such livestock or game.** Even if the "hunting" with the dogs was not intended to kill livestock or game on land, but the person entering the land with the dogs are **aware that there are livestock or game on the land, and he continues to set the dogs loose, he has accepted the possibility that such livestock or game may be killed and therefore, the necessary intention has been established in the form of *dolus eventuales*.**

11. Section 9 of the Free State Dog Tax Ordinance no. 10 of 1968 determines that a dog may be destroyed by or on command of an owner or occupier of land rural land, if it trespasses on such land and is not accompanied by a person or if it is causing damage on such land. A dog may also be destroyed in terms of this section by an authorised office if it is a stray dog which is not accompanied by any person (except if it is on property of the person keeping it).
12. Offences which may be incidental to the entering of land with the purpose to hunt with dogs, are those created in the Fencing Act no. 31 of 1963. Section 22 of this Act determines that a person is guilty of an offence if he opens a gate in any fence or leaves such gate open or unfastened, or neglects to shut such gate finding it open on passing through. Section 23 states that a person who climbs over or crawls through a fence or gate without permission of the owner or lessee of the land, shall be guilty of an offence. A person who wilfully damages or removes any fence or gate or any contrivance forming part of such fence or gate, shall be guilty of an offence in terms of section 24. Unfortunately the maximum penalty for these offence is a R150,00 fine and therefor considered to be minor offences. (This Act is in process of being amended.)

13. Seizure and Disposal of Evidence:

Section 20 of The Criminal Procedure Act is applicable to the **seizure of any evidence for any offence committed**. This section determines that the State may **seize articles believed to be concerned in the commission of an offence**, or which may afford evidence of an offence or which are believed to be intended to be used in the commission of an offence.

Any item which may afford proof of the commission of the offence of illegal hunting with dogs, or trespassing (tools used to cut a fence, etc.) or any of the other offences mentioned above, may be seized by a police official when a person is arrested for any of the abovementioned offences.

The **owner or lawful occupier or person in control of land may, in terms of section 23 of the Criminal Procedure Act, only seize items found on the person of the perpetrator which are mentioned in section 20 above and which is in the possession of or in the custody or under the control of the person arrested and shall forthwith deliver such article to a police official**. This section does **not allow the seizure** of any item or thing which is **not in possession or control** of the person arrested, at the time of the arrest, even if it was used or intended to be used in the commission of an offence. This would mean that the private person effecting the arrest may not seize the dogs used in the illegal hunt, because they would not be in control of the perpetrator any longer at time of his arrest.

A police official may, however, seize dogs used in an illegal hunt if there is sufficient evidence that the dogs were indeed used in such a hunt or intended to be used as such. A **reasonable suspicion** that the dogs were concerned in the commission or suspected commission of an offence, as indicated by surrounding circumstances and evidence, will be **sufficient to allow the seizure of the dogs by the police upon arrest** of a person for the offence of hunting with dogs without a permit in terms of the **Nature Conservation Ordinance** or the offence mentioned in the **Animals Protection Act**, as discussed above.

When an **arrest is made only for other offences than illegal hunting with dogs**, for instance, malicious damage to property (not caused by the dogs on the land), trespassing, etc., **the dogs may not be seized, but only items which may afford proof of such offences**. If a charge of **malicious damage to property is made for injury to animals on the land in question by dogs under control of the perpetrator, the dogs may still be seized**.

When dogs are seized, the police will have the practical problem of **not having the capacity to store or pound the dogs** until the finalisation of the criminal proceedings which may be instituted. There will also be the **financial implication of having to feed and maintain the dogs in good health**.

For this reason it is **recommended that, if any dogs are seized in a charge of illegal hunting, the police should issue the owner or keeper or person in custody of the dogs at the time of seizure, with a SAPS 299, to keep the dogs available until finalisation of any criminal proceedings, and hand the dogs over into the custody of such person.**

14. Unfortunately no hard and fast rule can be laid down as to what charges must be opened when there is a complaint or a suspicion of illegal hunting with dogs or related offences, as discussed above. In each instance, trespassing will be the easiest to prove and this charge must always be registered if the information supports it. Thereafter, each case must be considered on the merits and the evidence available to indicate what charges can be added.
15. The content of this letter must be brought to the attention of all members under your command.



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