

BRIEFING FOR APPEARANCE AT RURAL AFFAIRS AND ISLANDS COMMITTEE

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| <i>Date and Time of Committee Appearance</i> | 13 September 2023 09:00 – 09:20 |
| <i>Where</i> | Committee Room 2 The Scottish Parliament |
| <i>Purpose of Evidence session</i> | To provide opening remarks at the Rural Affairs and Islands Committee before they consider the Deer (Firearms etc.) (Scotland) Amendment Order 2023. The Committee will also consider the Deer (Close Seasons) (Scotland) Amendment Order 2023 at the same meeting. Your opening remarks are expected to take no longer than 3 minutes. |
| <i>Official Support Required</i> | Hugh Dignon, Unit Head – Wildlife Management Team Mob: [Redacted – Personal Info] Brodie Wilson – Wildlife Management Team Norman Munro – Solicitor, SGLD |
| <i>Comms Support/Media handling</i> | [Redacted – Personal info] – SG Comms [Redacted – Advice to Ministers] |

Briefing Contents

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- We laid two SSI's on 21st June to implement three DWG recommendations.
- One SSI will remove the close season for male deer and come into force on 21st October, so effectively there will be no male close season this year. We have also had some discussion with ministers about shortening the female close season (to cover only 15 Apr – 15 Sep), and have committed to considering this further & seeking advice from the Scottish Animal Welfare Commission.
- The other SSI will reduce the minimum ammunition weight to 80gr from 100gr, thus making non-lead ammunition more accessible. It will also permit the use of night sights to shoot deer (these will be able to be used during the day also). If accepted by the Committee we expect this will come into force in early November.
- It is important to note that these recommendations were accepted in 2021 by the then Cabinet Secretary for Environment, Climate Change and Land Reform.
- In both forming that response and the period since both Ministers and officials have engaged with a wide range of stakeholders on deer management issues, including extensive discussions around close seasons.
- We are also working on the consultation for primary legislation for deer which we expect to have ready later this year. Deer will be included in the Natural Environment Bill.

The Deer (Firearms etc.) (Scotland) Amendment Order 2023

This order includes proposals reduce the minimum ammunition weight and permit the use of night sights to shoot deer.

Process

With the affirmative procedure the instrument is laid in draft before the Parliament (and so it has not become law yet) and approved by resolution of the Scottish Parliament. As an affirmative instrument is laid in draft and has not yet become law it could be withdrawn, amended and re-laid. The lead committee will consider and report on an affirmative instrument before it is voted on by Parliament. If passed the instrument will be signed and become law.

Ammunition

At present the .243W [243 calibre Winchester/win] rifle is the most commonly used 'all round' rifle in Scotland. There are 7 factory types of non-lead bullets suitable for use in this rifle, but none of them meet the currently prescribed 100gr minimum weight. At present, non-lead alternatives for these popular rifles begin at weight of 80 grains.

NatureScot report

The NatureScot published a review of minimum bullet weight for all species of deer in Scotland in 2022¹. The report recommendations were:

- Consideration could be given to amending the Firearms order with addition of a minimum calibre stipulation of .240 along with a reduction in bullet weight from 100gr to 80gr for the culling of all species of deer.

¹ [NatureScot Research Report 1312 - Review of the minimum bullet weight for the lawful culling of all deer species in Scotland | NatureScot](#)

- Alternately the bullet weight could be removed and legislation could simply concentrate on a minimum calibre of .240 and minimum muzzle energy of 1700ft/lbs - as per legislation in England and Wales.

Our changes to legislation are slightly different to the recommendations made in the report, but the changes were based on further advice from NatureScot.

The proposed changes to minimum bullet weights from 100gr [gr = grains] to 80gr retains the existing requirements for a minimum muzzle energy of 1750ft/lbs and a muzzle velocity of not less than 2,450 feet per second. While this is slightly different to the options laid out in the NatureScot paper, in practice it achieves the same effect. There are no rifles on the market of less than .240 calibre which would meet the minimum muzzle velocity and energy requirements and use a bullet of less than 100gr.

There are some .22 centrefire rifles out there which could take cartridges of 80-90 gr weights where the average muzzle velocity is 2,651 feet per second and average muzzle energy of 1,294 ft/lbs. So as you while the .22 centerfire is heavy enough and fast enough it would fall significantly short in energy requirements as far as Scotland's larger deer species are concerned and wouldn't meet the minimum muzzle energy laid out in the Firearms Order.

[Redacted – advice to Ministers]

Ricochet

[Redacted – advice to Ministers]

These risks such as ricochet apply day or night in every deer management situation from highland to lowland. It is incumbent on operators to ensure they have a safe backstop and all firearms use is in a safe and responsible manner. Users either have a valid Firearms Certificate (FAC) which is the demonstration of 'fitness' to possess (or they are accompanied by someone who has an FAC) and the 'competence' element is dealt with through either legal requirement through deer stalking certificate 1 and or 2 and separate Fit & Competence requirements related to specific authorisations or the voluntary uptake of DSC 1 for general deer management.

Night Sights

We are not specifying the types of scopes that will be permitted within our proposals.

There have been some concerns raised around user operation and subsequent ability to currently identify the correct target animal, potential risks to dependents and ensure a safe backstop.

NatureScot and the Best Practice Stakeholder Group have developed a new best practice guide and updated version of the Night Shooting Code of Practice to reflect use of this technology. Thermal scopes are designed to detect heat signatures, while Night vision scopes are designed to detect and intensify ambient light. This means that thermal scopes are able to detect objects even in complete darkness, while night vision scopes are only able to detect objects in low-light conditions. Sights can be 'clip-on' front or rear mounted to existing conventional telescopic sights, or they can be standalone Night Vision, Thermal Imaging or Digital day / night sights.

This new guide will address all the safety and welfare concerns raised by highlighting factors which must be considered and placing the onus on operators to ensure they are fully familiar with the equipment to ensure its safe and effective use.

Providing specific technical specifications for image intensifying sights is not possible given the wide range of effective technology available, the emerging developments in this technology. It is commonly used for control of foxes, rabbits, rats etc.

There are basic fundamental prescriptions applied on the types of firearm and ammunition used to protect welfare, but normal daytime sighting devices (scopes), spotlights are not subject to strict prescription or standards.

NatureScot completed their 'Review of the welfare issues relating to the use of image intensifying rifle sights for the culling of deer at night'² in 2022.

NatureScot have concluded that the use of night sights to shoot deer is of no greater welfare risk than the existing arrangements for the use of lamps to shoot deer. There are some risks in terms of identifying the sex of the deer in particularly harsh weather conditions, however this is no greater risk than existing methods of night shooting. While this amendment to permit the use of sights at night, the decision for or whether to shoot is for deer controllers to take in line with their training and best practice guidance. If they have any doubt about the safety of conditions they should not shoot, that is the same when shooting deer, or any other species.

Night Shooting Authorisations

Section 18 of the Deer (Scotland) Act 1996 sets out in what circumstances deer can be taken or killed at night under authorisation. These include:

- to prevent damage to crops, pasture, human or animal foodstuffs, or to woodland; or
- in the interests of public safety; and
- no other means of control which might reasonably be adopted in the circumstances would be adequate.

These reasons are also set out in the NatureScot Licence application form - deer authorisation closed shooting 5(6) and night shooting 18(2) application.

NatureScot have on occasion had reason to refuse an authorisation to shoot deer at night.

These refusals have been either:

- In respect of other reasonable means – i.e. no attempt to control deer in season or out of season before night shooting takes place; or
- In respect of public safety grounds where the control area is deemed not safe to undertake safe control by either the Police or ourselves. These are a very small proportion of applications (one or two per year) as the discussion with NatureScot staff usually means applicants withdraw applications in these circumstances.

Key Stats

² [NatureScot Research Report 1311 - Study to determine deer welfare issues relating to use of image intensifying rifle sights for the culling of deer at night | NatureScot](#)

- The total number of deer currently shot under night authorisation per year is set out below:

| season | Total | no. night | percentage |
|-----------|--------|-----------|------------|
| 2010-2011 | 96101 | 9599 | 9.99 |
| 2011-2012 | 93206 | 10659 | 11.44 |
| 2012-2013 | 99132 | 14104 | 14.23 |
| 2013-2014 | 106047 | 13017 | 12.27 |
| 2014-2015 | 116381 | 16863 | 14.49 |
| 2015-2016 | 107039 | 15594 | 14.57 |
| 2016-2017 | 113442 | 18994 | 16.74 |
| 2017-2018 | 135865 | 21861 | 16.09 |
| 2018-2019 | 118772 | 20867 | 17.75 |
| 2019-2020 | 107530 | 18640 | 17.33 |

The Deer (Close Seasons) (Scotland) Amendment Order 2023

Process

Unlike affirmative instruments (where the committee would vote to approve the instrument and recommend to the Parliament that they vote to approve the instrument) negative instruments will simply pass unless the Committee takes a decision to recommend that the parliament should nullify the negative instrument. It would then go for a vote. If the Committee is content with the negative instrument then there will be no vote.

In this particular circumstance because of the motion to annul lodged by Edward Mountain MSP, this means the Committee will vote on whether to make a recommendation to Parliament to nullify it.

Male Close Seasons

Scotland

| Species | Close Season Dates | Proposed change |
|-------------|---|-----------------|
| Red Deer | 21 st October – 30 th June | No close season |
| Sika Deer | 21 st October – 30 th June | No close season |
| Fallow Deer | 1 st May – 31 st July | No close season |
| Roe Deer | 21 st October – 31 st March | No close season |

England, Wales and Northern Ireland

| Species | Close Season Dates |
|-----------|---|
| Red Deer | 1 st May – 31 st July |
| Sika Deer | 1 st May – 31 st July |

| | |
|--------------------|---|
| Fallow Deer | 1st May – 31 st July |
| Roe Deer | 1 st November – 31 st March |
| Chinese Water Deer | 1 st April – 31 st October |
| Muntjac Deer | No close season |

Background

- Removing the male closed season will remove barriers to effective control, rationalising the existing system for both land managers and NatureScot.
- We cannot predict how many additional deer will be culled through the removal of male close seasons but there is a social and cultural dimension to this given such a long history of control within seasons, it is likely that we will see change and increased cull over time.
- Achieving an increase in the cull entirely depends on the willingness of stalkers to control but the measure removes administrative barriers which may preclude some control taking place – so an increase can be expected even if small in the short term. The numbers of out-of-season males being shot has been increasing over the last number of years.
- Close seasons for deer were only introduced into legislation under the Deer (Scotland) Act 1959 and came into force in 1962.
- The purpose of that Act was to improve the protection of agriculture and forestry from damage, but close seasons were negotiated as a demand from sporting estates to protect sporting interests.
- Cull returns will continue to be monitored by NatureScot.

Seasons and Climate Change

There is not anything climate related that significantly affects male deer – other than rut periods for red deer may be getting earlier, so perhaps giving more time for bodyweight increase pre winter. This is a consideration for female deer/birth dates.

Analysis of nearly thirty years of data from Rum revealed dramatic changes in the timing of key life events. Warmer spring temperatures result in deer conceiving and giving birth earlier. Calves are now born on average almost twelve days earlier compared to the 1980s.

Some of this is due to individuals responding to better summer conditions within their own lifetimes – this is known as phenotypic plasticity. But the results also revealed that the population’s genetics are shifting towards earlier breeding - a rare example of evolution of action. Climate change has also shifted the timing of the rut and antler cleaning and casting.

Welfare Disturbance

There is a perception that because stags are physically exhausted after the rut they suffer distress if they are ‘harassed’ by stalking, ie deer will run if disturbed and expend energy when their reserves are low (and as this is winter; the weather is cold/wet and food is limited).

Skilled practitioners, using best practice and local knowledge and expertise are best placed to make decisions about which deer to shoot and under which circumstances.

Key Stats

- At present, around 15% of deer culled annually in Scotland are culled out of season.
- NatureScot currently authorises culling of male deer outwith the open season under specific and general authorisation, principally to reduce damage to crops, forestry and the natural heritage.
- From 2013-14 to 2019-20 37% of male deer shot were shot out of season. This has increased each year since 2013/14 (from 24% in 2013-14 to 48% in 2019-20). Note: this is across all four species of deer, not just red deer stags. See table below for detail (figures calculated from NatureScot website: <https://www.nature.scot/doc/naturescot-deer-census-results>)
- FLS has been culling male deer all year round for many years (the total in 22/23 was 19,969 with 11,765 of those under authorisation), and has not experienced any welfare issues associated with the practice.
- The number of male deer shot out of season may increase if the close season is removed due to the removal of administration/ bureaucracy. However the reason for culling out of season (reduction of damage) is unlikely to change therefore we do not anticipate a significant increase.

| season | male out | total male | % |
|---------------|-----------------|-------------------|--------------|
| 2013-14 | 9743 | 40575 | 23.91 |
| 2014-2015 | 15034 | 44022 | 34.15 |
| 2015-2016 | 12837 | 43479 | 29.52 |
| 2016-2017 | 16397 | 43306 | 37.86 |
| 2017-2018 | 21035 | 50762 | 41.44 |
| 2018-2019 | 19600 | 45407 | 43.17 |
| 2019-2020 | 20198 | 41331 | 48.87 |
| | | | 36.98 |

Sensitivities

Edward Mountain MSP has lodged a motion to annul the Deer (Close Seasons) (Scotland) Amendment Order 2023. The motion to annul means the Committee will vote on whether to make a recommendation to Parliament to nullify it.

Scottish Environment LINK and its six affiliated landowning NGOs including RSPB Scotland, John Muir Trust, Scottish Wildlife Trust, National Trust for Scotland, Woodland Trust Scotland, Nature Foundation and Trees for Life sent a letter to the Rural Affairs and Islands Committee recommending that the Committee reject this motion to annul.

In their letter they stress the following points:

- The efforts taken by the Scottish Government to “consult with all parties involved in deer management”.
- That “there is no scientific basis for maintaining close seasons for male deer.”
- That “This measure does not actually oblige any landowner to cull male deer all year round.”

[Redacted – advice to Ministers]

Recent PQs

Rachael Hamilton MSP, recently lodged a number of PQs relating to these legislative proposals. The PQs (S6W-20504, S6W-20505, S6W-20508 & S6W-20509) are due in parliament by 7 September 2023, therefore, the answers will be published before the Committee meets.

Rachael Hamilton MSP, Scottish Conservation and Unionist Party Member for Ettrick, Roxburgh and Berwickshire is a member of the Rural Affairs and Islands Committee and is the party spokesperson on Islands and on Rural Affairs.

Recent correspondence

Kate Forbes MSP wrote to you on 1 September to raise concerns over changes to male close seasons. We have drafted a response and will ensure it is with Private Office ahead of the Committee.

Stakeholder Views

We were required under s.21(1) of the Deer (Scotland) Act 1996 (“the 1996 Act”) with regards to changes to ammunition and use of night sights to consult those stakeholders who are either interested, or likely to be affected, and s.5(1) of the 1996 Act with regard to close seasons to consult those stakeholders. Ministers think appropriate, before making any of these changes.

We therefore wrote to external stakeholders, including members of the Deer Management Round Table (DMRT) (excluding public bodies/agencies who are represented on the Strategic Deer Board) to seek their views on our proposals. The Consultation period lasted from May – June 2023. The instruments for each item were laid shortly after in order for legislative changes to be made in advance of the close seasons for this year.

The table below includes a list of the stakeholders that we wrote to, and those highlighted are those from whom we received a response:

| | |
|--|--|
| Lantra | RSPB |
| Mountaineering Scotland | Scottish Association for Country Sports (SACS) |
| Wild Deer Best Practice Guides | Scottish Land and Estates (SLE) |
| Confederation of Forest Industries (Confor) | John Muir Trust |
| Game and Wildlife Conservation Trust | Association of Deer Management Groups (ADMG) |
| Trees for Life | Scottish Countryside Alliance |
| Veterinary Deer Society | Scottish Environment LINK |
| National Farmers Union Scotland (NFUS) | British Association for Shooting Conservation (BASC) |
| Scottish Crofting Federation | SSPCA |
| Scottish Venison Association (formerly the Scottish Venison Partnership) | British Deer Society (BDS) |
| | Scottish Gamekeepers Association (SGA) OneKind |

Consultation responses – key points

[Redacted – advice to ministers & consultation responses have been published so are publicly available information]

[Redacted – advice to Ministers & the Minister’s responses at Committee are a matter of Parliamentary record, so this information is publicly available]

List of Deer Management Round Table Members

| DMRT Membership Organisations - August 2023 | |
|--|--|
| LANTRA | RSPB |
| Mountaineering Scotland | Scottish Venison Association (formerly the Scottish Venison Partnership) |
| British Deer Society (BDS) | Scottish Land and Estates (SLE) |
| Confederation of Forest Industries (Confor) | John Muir Trust |
| GWCT | Association of Deer Management Groups (ADMG) |
| Trees for Life | Scottish Countryside Alliance |
| Scottish Gamekeepers Association (SGA) | Scottish Environment LINK |
| Scottish Association for Country Sports (SACS) | National Farmers Union Scotland (NFUS) |
| Scottish Crofting Federation | SSPCA |
| British Association for Shooting Conservation (BASC) | Wild Deer Best Practice Guides |
| Woodland Trust Scotland | Veterinary Deer Society |
| Lowland Deer Groups | National Wildlife Crime Unit |
| Transport Scotland | CEH |
| Forestry and Land Scotland (FLS) | Community Land Scotland / Knoydart Foundation |
| Scottish Wildlife Trust | Scottish Forestry |
| Police Scotland | Cairngorms National Park Authority (CNPA) |
| Food Standards Scotland (FSS) | Loch Lomond and Trossachs National Park Authority |
| Country Sport Scotland | |
| NatureScot | James Hutton Institute |
| NTS Various Scottish Government including Veterinary Advisor | Forest Policy Group Ramblers Association |