

WILDLIFE AND NATURAL ENVIRONMENT BILL

Consultation response by Advocates for Animals

Advocates for Animals welcomes the proposals for new measures to modernise certain parts of wildlife legislation and is pleased to submit the following response. We have not responded to all questions in the consultation document, but only those where we feel that we have a remit to comment.

We wish to draw attention to our response to Question 64 on the creation of a new offence of tampering with a legally set snare. We feel that this proposal sits ill with the general principles of the consultation, which is generally concerned with the protection of wildlife. We believe it is inappropriate to criminalise individuals for attempting to assist suffering wild animals, particularly when offences of vandalism and malicious mischief are more than adequate to deal with any possible malicious interference with property. We hope that the Scottish Government will abandon this proposal.

DEER

Collaborative Deer Management

Q1A. What is your view on the proposal that the right to take or kill deer should be balanced by a statutory responsibility on landowners to manage them sustainably?

We agree that the context for deer management has changed from the time of the original Deer Acts, and it is now essential, as stated in the consultation document (page 10), that the environment, public safety and the welfare of wild deer be taken into account more fully in deer management decision-making.

We welcome the inclusion of the need for better mechanisms to deliver local deer management and deer welfare as one of the key drivers for reforming the current legislative framework.

We support the objective of ensuring the highest standards of deer welfare and welcome the statement that, where deer management is concerned, “the public interest may include [...] protection of animal welfare”.

We agree that a statutory foundation should be provided for the responsibilities of landowners. The concept of sustainable management is open to interpretation and in our view must always include protecting the welfare of individual animals involved in any operation.

Q1B. Is there a better way in which landowners' responsibility to manage deer might be framed?

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Q2. What is your view on whether collaborative deer management structures should continue to be voluntary in the first instance?

It appears reasonable to us that deer management should continue to be based in the first instance on voluntary mechanisms, given that – as far as we are aware – operational difficulties are the exception rather than the rule. However when conflicts arise and emergency measures are imposed as a consequence, animal welfare can suffer. It is therefore sensible to anticipate this and ensure that management plans take a strategic approach to addressing deer welfare.

Q3. Do you consider that there is a need to ensure there is wider (e.g. community) engagement in deer management? If so, how?

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Q4. What is your view on the proposal that land managers should be required to prepare and implement a statutory Deer Management Plan where voluntary deer management structures are failing to deliver in the public interest?

The consultation proposes that, where the voluntary approach to DMGs fails, DCS could compel a group of landowners to develop and implement a deer management plan to protect the public interest. On the basis that the public interest includes the protection of animal welfare, we support this. However, we think it might be difficult for a group of landowners who have not hitherto been able or willing to collaborate on deer management to focus appropriately on all of the issues in hand, and we would like measures to be available to ensure that animal welfare is given the priority that it deserves. We suggest therefore that whenever the DCS intervenes using the proposed statutory powers, its list of priorities should offer clear guidance on animal welfare issues to be addressed, such as restrictions on supplementary feeding and examination of immunocontraception as alternatives to lethal control.

A plan should be formulated in such a way as to avoid any deer issues requiring to be addressed on an emergency basis, which might have an adverse effect on deer welfare.

Q5. What is your view on the proposal that failure to comply with a statutory Deer Management Plan should be an offence, and that DCS should be able to recover costs from landowners or occupiers where it has to take action to enforce the plan?

Failure to comply with a statutory plan should be an offence and it would be normal for the authority to be able to recover costs involved in ensuring compliance.

Q6. What is your view on the proposal that DCS' existing powers to constitute Deer Panels should be extended to enable DCS to require the Deer Panel to prepare and implement a Deer Management Plan, where a particular local deer management issue arises?

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Q7. What is your view on the proposal that DCS' current powers to intervene in deer management should be extended to a wider range of circumstances (set out above) than is currently the case?

There has been concern in the past that emergency measures such as taking immediate action to reduce deer numbers in a specific locality have led to unnecessary suffering of deer. We would however support the extension of these powers for the purposes described provided they were genuinely in the interests of deer welfare.

Q8. What is your view on the proposal that further action is required to improve the skills and competence of those involved in taking/killing deer?

We believe all those who kill deer, both in and out of season, including sporting clients and first time shooters, must be "fit and competent". Existing training courses and certification processes available are currently widely used on a voluntary basis but for the avoidance of animal welfare problems, we believe that qualifications and legislation should be clear, unambiguous, and mandatory.

Fitness and competence should be demonstrated through an independent, formalised assessment process. Shooters should not be able to self-certify their fitness and competence. Such an assessment must ensure that the applicant has the shooting skill and accuracy to deliver a humane shot. The limited assessment of wounding rates caused by existing stalking activities that has been undertaken highlights a high degree of suffering caused to stalked deer.

The animal welfare consequences of poor marksmanship are likely to be severe. Bradshaw & Bateson (2000)¹ considered that wounding was the most important of a number of potentially serious welfare issues surrounding stalking: they found that estimates of wounding rates by stalkers showed that 11% of deer required two or more shots to kill, 7% took 2-15 min to die, and 2% escaped wounded.

¹ Bradshaw E. & Bateson P. (2000). Welfare implications of culling red deer (*Cervus elaphus*). *Animal Welfare*, 9, 3-24.

Injuries observed during the study might have resulted from a number of causes, including wounding by poorly placed shots. Bradshaw and Bateson said: "Some of these wounds, particularly those from head shots that shattered part of the jaw of a deer, were horrific." Data was voluntarily provided by stalkers, all either experienced marksmen or, in the case of amateurs, accompanied by such. The researchers added that wounding frequency obtained by these methods might well be an underestimate, since memories are imperfect and stalkers may not always be aware of when they have wounded an animal. In their view, stalkers did not like to admit to their mistakes, so that getting reliable estimates of wounding by shooting was not always easy or accurate.

It was noted that higher wounding rates would be expected from poorer marksmen and that if shooting by inexperienced or incompetent stalkers increased, the estimate for numbers of deer that escaped wounded would have to be inflated. Bradshaw and Bateson concluded: "It follows that careful management of stalking is important for animal welfare."

If the findings of this study were representative for all red deer shot in Scotland then of an annual total of 70,000 shot deer, at least 7,700 deer would require two or more shots to kill, over 4,900 would take 2-15 minutes to die and 1,400 would escape injured. This level of suffering is totally unacceptable. Thousands more deer of other species are also shot every year.

According to Urquhart & McKendrick (2003)²: 'In recent years more than 75,000 wild red deer have been culled annually in Scotland. Despite the large numbers being culled there is little evidence about the number or location of the wounds created in these deer as a result of culling operations, and the need for research into shooting standards and skills has been identified by the Deer Commission for Scotland.'

This study analysed a sample of deer carcasses considered to be a representative cross section of the red deer culled in Scotland at that time. Analysis of the wound tracts in 943 carcasses of culled wild red deer (from licensed venison dealer premises) found that up to 27% of the carcasses had more than one wound tract, averaging 14% across sampling days. This was considered likely to be an underestimate as it did not allow for tracts in the head or legs or trachea.

It is generally recommended that, wherever possible, shots should be taken at deer standing broadside and the bullet should pass through the heart and/or lungs. It is considered that deer can also be culled humanely with shots to the neck, although these are discouraged because of the risk that the deer may be paralysed while remaining conscious until it dies. However, this study found that 15.3 per cent of culled deer carcasses with a single permanent wound tract had damage limited to cervical structures, indicating that 'neck shots' were commonly used.

² Urquhart K., McKendrick I. (2003) Survey of permanent wound tracts in the carcasses of culled wild red deer in Scotland. *Veterinary Record*, 152, 497-501

The percentage of predominantly adult male carcasses with more than one permanent wound tract, 17.9%, was higher than the percentage of female and juveniles, 10.2%. The difference may be due to a number of factors including bodyweight. However, it was noted that another contributing factor may be that the adult males are predominantly culled by sporting tenants or by the landowners and their guests whereas most of the females and calves are culled by full-time, professional stalkers.

During the peak period of rut, there was a significant increase in the number of carcasses with more than one permanent wound tract. This is associated with a decrease from 89% to 71% in the probability of the first permanent wound tract also being the last. This could be due to the fact that increased fitness means it takes longer for serious gunshot wounds to incapacitate physically fit, highly motivated or animals in heightened state of mental arousal. Other possibilities suggested were rifle calibre, bullet specification, marksmanship and the range at which the deer were shot.

In view of these concerns we think it reasonable that all stalkers should be required to show competence through training and certification. Qualifications should also be renewed on a regular basis to ensure that stalkers are educated in the most current methods and techniques.

Q9A. Do you consider that everyone who shoots deer unsupervised in Scotland should first have to demonstrate that they have skills and knowledge in public safety, deer welfare and food safety? Yes/no/don't know.

Yes.

Q9B. If not, do you consider there is a better way to safeguard the welfare of deer than requiring stalkers to demonstrate a minimum level of skills and knowledge?

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Q10. What is your view on the proposal that it should be an offence to take/kill deer unless you have demonstrated skills and knowledge, or are supervised by someone who is on the register?

We agree that this should be an offence.

Q11. What level of practical and theoretical skills and knowledge do you consider should have to be demonstrated by those who shoot deer unaccompanied?

A marksman should be able to ensure that shots are taken when the deer is standing broadside, and the bullet should pass through its heart and both lungs, referred to as a 'heart/lung' shot. While deer may also be culled humanely by shots to the neck, these

require greater skill and are discouraged unless ideal circumstances prevail or a close range 'coup de grace' shot is required. Although shots to the head can be instantly fatal if the brain is penetrated, non-fatal wounds involving the maxilla or mandible are possible, and such shots are actively discouraged.

Q12. Should exemptions from demonstrating skills and knowledge (“grandfathers’ rights”) be available to those who have substantial experience of deer management? How might this be defined?

Given the rates of wounding that already occur (see the response to Question 8 above), we would not agree that there should be any “grandfather’s rights” exemptions.

Q13A. Should the names of those who have demonstrated the required level of skills and knowledge be held on a register, administered by DCS?

Yes.

Q13B. Do you have other suggestions for how such a register could be administered?

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Q14. What is your view on whether, consequential to effective local deer management structures being in place and a requirement for those who shoot deer to demonstrate skills and knowledge, the female Close Season could be reduced to cover the period of greatest risk to dependent juveniles?

We recognise that the operation of the close seasons is problematic, in particular, as long as owner/occupiers are legally entitled to shoot deer in the close seasons without authorisation from the DCS. In principle, all killing of deer in the close season must be subject to prior authorisation from DCS. Should there be a need for owners/occupiers to take action in an emergency, i.e. to prevent unexpected damage that is occurring there and then, a mechanism should be developed for notification to be made to DCS within, say, 48 hours of such emergency killing. DCS would then be able to assess whether the action was reasonable, appropriate and followed Best Practice Guidance.

There are strong moral and animal welfare reasons for deer of all species and both genders to have a close season. Females must have a close season in order to protect heavily pregnant animals and dependent calves. Close seasons should be set so as to prevent the shooting of deer in the latter stages of pregnancy. We believe that a significant proportion of the public would find the shooting of deer in an advanced stage of pregnancy to be ethically unacceptable from the point of view of both the heavily

pregnant female and the potential suffering of the foetus which, in a heavily pregnant animal, will be well developed.

It is extremely difficult to determine precisely at what point juveniles are no longer dependent on their mothers. In our view the mother provides a sustaining influence over and above the supply of milk. A juvenile born in June whose mother is shot in December may, without its mother, be unable to survive a harsh winter in a mountainous area.

We believe that it is essential for there to be a close season to protect juveniles. This is partly to avoid the risk of an adult female with dependent young being shot under the mistaken belief that she is a yearling with no dependent young. However, juveniles also need a close season in order to prevent the culling of very young animals. It is ethically unacceptable to cull young animals when they have known hardly any life at all. We believe that, where culling is necessary, the policy should be to cull sick, infirm, injured and old animals before any others. This has the advantage of following the natural pattern in which the diseased and old in a herd are the animals least likely to survive, rather than targeting healthy young animals.

Q15. What is your view on whether, consequential to effective local deer management structures being in place and a requirement for those who shoot deer to demonstrate skills and knowledge, the national male Close Season could, over time, be removed?

There are strong moral and welfare reasons for deer of all species and both genders to have a close season. Male deer need a close season in order to have an undisturbed feeding period to build up fat and energy reserves post-rut. Any disturbance to that feeding time can be detrimental to this process. The disturbance emanating from culling can be particularly unsettling for non-target males and can significantly reduce the feeding time available to them.

The killing of deer during the close season in order to prevent serious damage to property should in all cases be subject to a statutory test that no other effective non-lethal means of control is available. At present Section 5(6) of the Deer (Scotland) Act 1996 incorporates such a test, whereas the much broader Section 26(1) does not. We believe that Section 26 should be strengthened to include the test that no other non-lethal means of control is available. We believe that the Act should be amended to make it clear that the test must be applied rigorously with the onus being on the person who wishes to kill deer to demonstrate that no effective non-lethal means of control is available.

The term "serious damage" to property should be strengthened to make it clear that it only applies in the case of exceptionally serious damage.

Q16. Do you have a view on whether, consequential to effective local deer management structures being in place and a requirement for those who shoot deer to demonstrate skills and knowledge, there could be flexibility to have male Close Seasons set at a local level?

We firmly believe that close seasons should be based purely on welfare considerations. We recognise the need to take account of damage control and cull effectiveness but whenever there is a conflict between these factors and welfare considerations, priority must be given to the latter.

Where it is practicable to do so in terms of administration and enforcement, seasons should vary to take account of geographical and habitat considerations.

However, we are firmly opposed to close seasons becoming a voluntary matter at the discretion of owners and occupiers. We believe that it is essential that close seasons continue to be laid down in legislation. There has recently been growing concern about the welfare aspects of deer management and it would be a retrograde step for a factor as essential and crucial as the close seasons to be downgraded in importance by being removed from legislation and left to the discretion of owners and occupiers. Such discretion would inevitably be exercised in different ways, leading to inconsistency.

Removing the close seasons from legislation would also lead to a reduction in transparency and accountability.

Q17. Do you have a view on whether, if a requirement to demonstrate skills and knowledge was established, owner occupiers should no longer be able to shoot deer in the Close Seasons without authorisation?

Owner/occupiers should not be permitted to shoot deer in the close season without authorisation.

Q18. What is your view on the proposal that the requirement to obtain an authorisation to shoot deer at night on a particular property should be replaced by the requirement on the individual to be recorded on the proposed register of competence as having appropriate skills and knowledge?

We accept this proposal as long as the required skills and knowledge for this type of shooting are specified and tested.

Q19. What is your view on the proposal that the requirement to obtain an authorisation to drive deer with vehicles for the purpose of culling should be replaced by a new offence of driving deer, reckless as to the consequences for their welfare?

We support the intention of protecting deer welfare, and in particular the incorporation of the word “reckless” in the proposal. However, it might be difficult to establish the state of mind of the accused person. On balance, therefore, we feel that the simplicity of driving without authorisation is to be preferred.

Q20. Should cull returns be provided by owners/occupiers or by individuals who are on the proposed register of competence?

By individuals. It will be helpful for the numbers of animals shot by individuals to be monitored: this will contribute to identifying experience, practice and training/re-training needs.

GAME LAW

Game Licensing

Q21. If the game laws are modernised, do you have a view on whether existing statute should be (a) amended but retained in broadly its existing form; (b) repealed and consolidated into a single game law statute; or (c) repealed and brought within the Wildlife and Countryside Act 1981?

We support (c) in order that all offences against wild animals are subject to equivalent legal sanctions. This consistency would also aid officials involved in enforcement.

Q22. What is your view on the proposal to abolish the requirement to have a licence to take/kill game?

We acknowledge that game licences are not routinely obtained and that there is little point in continuing with an ineffective regime which appears not to be enforced or to provide a useful source of revenue. However, we oppose the killing of wild animals and believe that optimum protection for animals should be provided within existing legislation and social norms.

On balance therefore we believe that it would be preferable to implement the proposed alternative means of reform – to issue licences electronically at an increased rate, using the resultant revenue for wildlife conservation projects, administration and enforcement.

Q23. If the licence requirement is abolished, should either of the alternatives above be pursued, or in what ways, and for what purpose(s), do you consider that the current system could be reformed?

As stated above, we believe that the licence should be retained in a more modern form.

Q24. What is your view on the proposal to remove the requirement to have licences to deal in game?

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Q25. What is your view on the proposal to create a new offence of selling a game bird which has been unlawfully killed or taken (if the restriction on dealing in game in the Close Season is removed)?

We would agree with an offence of knowingly selling a game bird which has been unlawfully killed or taken.

Close Seasons

Q34. Do you have a view on whether penalties for game bird Close Season offences should be harmonized with those which apply to quarry species?

There are overwhelming ethical and animal welfare reasons for providing close seasons for all birds that may legally be killed in Scotland. Killing adults while there may be dependent chicks in the nest means that the young will starve to death and this is inhumane. Given that there is no statutory obligation on a person to observe the welfare of an animal for which he is not directly responsible, we feel that a general prohibition on killing during the breeding season for the species in question is a practical and equitable approach to this problem.

Q35. What are your views on the proposal that Ministers should have a power to vary the Close Seasons of game birds?

It appears logical to take a harmonised approach and also to allow Ministers to respond to environmental changes and expert advice

Q36. What are your views on the proposal that Ministers should have the facility to issue an order protecting game birds outwith their Close Season?

We support this proposal.

Q37. Do you have a view on whether the provisions described above relating to injured wild birds should be applied to game birds?

Most game birds are wild birds and it is artificial not to extend the provisions of s.4(2) of the Wildlife and Countryside Act 1981, relating to compassion to injured animals, to these species. We therefore support measures for humane despatch in appropriate circumstances.

Q38. Should provision be made to license the taking/killing of game birds in their Close Seasons if specified?

The only provision for taking /killing of game birds in their close seasons that could be accepted would be for humane despatch on compassionate grounds, as described above.

INVASIVE NON-NATIVE SPECIES

Scotland and the UK have seen the consequences of a long history of inappropriate introductions and releases of non-native species. Such consequences may involve damage to the environment, to indigenous competitors and to the introduced species. We therefore support further measures to prevent potentially harmful introductions by release, backed by the additional protection of a prohibition on sale of certain species. However we believe that these must be tempered by recognition of the long establishment and prevalence of some species, such as grey squirrels and muntjac deer, which may now be considered “ordinarily resident” in the UK.

We believe that when any potential management actions are being considered an Animal Welfare Impact Assessment should be undertaken. This would involve independent expert scientific assessment of all the direct and indirect welfare implications of all potential actions, whether lethal or non-lethal.

When assessing impacts, consideration should be given to individual animals’ welfare and to the numbers of animals which would be affected, in the short, medium and long-term.

If it is decided that lethal control is unavoidable, the most humane of any options must always be used. Any actions taken must be subject to ongoing monitoring, assessment of all animal welfare outcomes and re-appraised on a regular basis.

In our view it is unethical to kill one species in order to preserve the purity of another, when the first species causes no harm to the other in any immediate respect.

We agree that in general an animal should not be released from under the control of man unless it is of a type that normally resides in the Scottish countryside. However, we suggest that there should be derogations for releasing certain wild animals which have been taken temporarily into captivity on welfare grounds – to treat an injury, for example – so that animals do not have to be kept indefinitely or killed because it would be an offence to release them back to the wild where they came from.

Preventing release of invasive non-native species

Q39. Do you consider that providing definitions where the meaning is not clear is useful? Do you think the definitions provided through the CBD (Convention on Biological Diversity) Guiding Principles should be used where they are available or do you wish to propose alternatives?

We are less concerned with defining the word “wild” than the expression “non-native”. We would suggest for example that grey squirrels, which are extremely well-established in the UK and by and large are welcomed by the human population must now be regarded as native to the UK. They may be regarded as harmful by forest managers, and the issues of competition with, and disease transmission to, red squirrels are as yet unresolved – but in any argument for controlling their numbers their “alien” status is no longer relevant.

Q40. Do you have any comments or suggestions relating to the proposed definition for the “wild”, or more appropriate ways this could be determined?

If an animal is not of the type which is normally permanently or temporarily under the control of man, we would regard it as a wild animal.

Q41. Do you have a view on the proposal to place a responsibility on an owner to ensure animals are kept in such a way as to prevent their escape and that a landowner would commit an offence if a non-native species spreads from their land or managed area?

We are broadly in support of this proposal subject to the defence of due diligence described in the consultation paper (p 29). Examples of this might include non-native species of fish that are introduced for fish farming

Q42. Do you have a view on the proposal to remove the term “ordinarily resident”?

We believe that animals which have been established in the wild for a number of years should be designated as “ordinarily resident” and should be protected from lethal control and persecution.

Q43. What are your views on the proposal that a no-release general presumption would provide a more effective and simpler framework?

We support a no-release general presumption for non-native species as past experience has shown that releases of such species - whether carried out innocently or recklessly - very often cause environmental problems and lead to persecution of the released animals and their progeny. We note that this presumption would not apply to named game species, including non-native reared pheasant chicks, or to species of fish introduced to fish farms, where the risk of escape is significant.

Q44A. What are your views on the policy intention relating to animals?

We agree with the general presumptions that no non-native species should be released from the control of man or into the wild; no species should be released outside their natural range; and the release of certain named species should be subject to licensing.

There might be circumstances in which an individual non-native animal could be released outwith its natural range after rehabilitation, and we suggest that an exception could be made for this. Certain categories of animals could be spayed/neutered before release, which would remove concerns about breeding in the wild, but would allow the animals to live in a more natural environment than in captivity.

Q44B. Can you think of other exceptions that should be included?

In certain circumstances, the release of an individual wild animal beyond its native range might be a humane alternative to lifelong captivity or euthanasia. We suggest that advice from expert rehabilitators should be taken as to the desirability of such a derogation.

Q45A. Do you consider that this approach will provide a more precautionary approach for the release of plants?

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Q45B. Can you think of other exceptions that should be included?

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Q46. What are your views on how information - on whether a species is native or non-native and what its natural range is - should be provided?

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Q47A. What are your views on the proposal to introduce a power enabling specified bodies to take reasonable mitigating action to control, contain or eradicate non-native species or species outside their native range?

To avoid unnecessary killing of wild animals, where mitigating action is required we would wish non-lethal measures such as containment to be the norm, rather than the exception.

It is reasonable for the relevant agencies to have a power of access to land for the purpose of investigation and surveying for non-native species. However, we could not support blanket powers to require individuals to control and remove specified non-native

species from their land, site or property. While we accept the pragmatism of a generalised prohibition on release of all non-native species, we cannot see a justification for creating powers of destruction for non-native species that are not invasive or demonstrably harmful. Many non-native species live harmlessly in our environment. While it is wise to presume against the introduction of any more species, equally it is wrong to legislate for the eradication of those that are already established. Any such power must only be taken on a case-by-case basis.

We oppose the creation of general powers for inspectors to confiscate and order the destruction of species that are banned from sale under s.14 of the Act. The description of these powers does not give clarity as to the priority being accorded to animal welfare. The destruction of sentient animals should always be the very last resort and should only be carried out subject to specific authorisation and under independent scrutiny to ensure that the animals are protected from suffering.

Q47B. Which organisations should this be provided to?

We would recommend that, if these powers are created, they should be limited to a specialist government agency such as SNH, and should include a requirement to promote non-lethal methods. If these are not feasible, then the agency must have a duty to abide by, or impose, operating procedures that ensure humane treatment of animals.

Q48. What are your views on the proposal to increase the remit of various inspectors to deal with invasive non-native species issues?

If this remit is to be increased, we suggest a requirement to consult the specialist agency or agencies before the powers are exercised.

Q49A. What are your views on the proposal to provide a power to Scottish Ministers to require individuals to control and remove non-native species contained on their land, site, or property (e.g. boat)?

Control should be focussed on containment and non-lethal controls such as habitat management and developing techniques such as immunocontraception or vaccination.

Q49B. How should this power be used?

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Q50. What are your views on the proposal that specified bodies should have powers to access land to investigate, survey and control (where access is denied)?

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Q51A. Do you consider that costs of any action should be able to be recovered?

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Q51B. Do you have any views on how these powers should be used?

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Causing And Permitting An Offence

Q52. What are your views on the proposal to provide an offence relating to cause and permit?

We agree with this proposal. It is important that anyone implicated in the commission of an offence is subject to legal sanctions.

Q53. What are your views on the proposals to ensure fish are treated in the same manner as other species? What is the best way of achieving this?

We would support the reconciliation of the legislation covering fish but we do not have a view as to which level of penalties should prevail.

Overlap With/Extension Of Other Legislation

Q54. What are your views on the proposal to extend the provisions of the Destructive Imported Animals Act 1932 to include greater numbers of invasive non-native species?

We think it would be preferable to address these problems by way of modern primary legislation rather than the 1932 Act. In particular we would rather see the separation of lethal controls from non-lethal measures, and for the latter to be encouraged.

Changes Via Secondary Legislation

Q55. What are your views on the proposal to make an Order under Section 10 of the Destructive Imported Animals Act 1932 for Muntjac deer (*Muntiacus reevesi*) for Scotland?

Muntjac deer may be prolific breeders but they have been present in Britain for over one hundred years and in certain areas may be considered “ordinarily resident”. We would support an Order under s,10 as a preventative measure to prohibit further importation or release of these animals, or to ensure that any captive animals were kept under licence. We accept that under current circumstances an Order would be unlikely to result in a large eradication programme and we would hope that a precautionary Order might avert the need for such a programme arising. It should not therefore be necessary at this stage to include a power of destruction within the Order.

Q56. Do you consider than an Order under Section 10 of the Destructive Imported Animals Act 1932 should be made for All Cervus species on the “refugia” islands (Outer Hebrides, Arran, Islay, Jura, Rum; and proposed refugia islands - Scarba, Lunga and the Garvellachs)?

We agree that it is sensible to use an Order to ensure that deer are not introduced that could pose a threat to the integrity of the red deer on the refugia islands. Escapes from deer farms should be avoided. However, sika deer are good swimmers and if any should arrive on the islands by natural methods, we would recommend that the Orders allow for them to be translocated back to the mainland, rather than killed.

Q57. Do you have any comments on how a licensing system for the prospective orders under section 10 of the Destructive Imported Animals Act 1932 should work?

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SPECIES LICENSING

Q58. What is your view on the proposition that licensing is best concentrated within operational authorities rather than central government?

We believe that licensing should be devolved to the appropriate governmental delivery organisation, and this should include the allocation of General Licences for birds, so that breaches and non-observance of these licences will receive greater attention than is currently the case. The need to abide by these licences should be more widely publicised.

Q59. Which authority or authorities do you think should be responsible for the administration of these licences?

We support Option 2, under which SNH would become the sole administrator of species licences and the main licensing authority. There is already considerable expertise and experience of licensing within SNH and this would be simpler for the customer and would ensure consistent, coherent and evidence-based decision making.

Q60. What is your view on the proposal that species licensing that is associated with development requiring planning consent would be best dealt with by local authorities?

For valid reasons, local authorities often apply and interpret licensing legislation differently, leading stakeholders to complain about inconsistencies across the country. Again, for consistency it would be preferable to have consideration and administration of all licences concentrated within one specialist body.

Q.61 What are your views on the proposal that the 1981 Act should be modified to allow for licences to be granted for development activities for Schedule 5 species in the same way as can presently be done for licences granted under the 1994 Regulations and the 1992 Act?

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Q.62 What are your views on the proposal to tidy up Schedule 6 of the 1981 Act and remove those species which are covered by the 1994 Regulations?

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SNARING

Q63. Do you have any views on the practical operation of the proposed snaring accreditation scheme?

We do not agree with statutory recognition for an accreditation scheme to be run by an industry that does not acknowledge the ethical, legal and animal welfare problems associated with snaring. Funding for preparatory work has already been sought by the Scottish Gamekeepers' Association and other groups that expect to deliver this training and accreditation. We consider this premature, given that the legislation has not even been published. We understand that no independent veterinary or animal welfare advice had been sought by the practitioners' groups for inclusion in the scheme before we raised the importance of these matters, and are concerned that they will not receive sufficient priority. It is extremely important that practitioners are given an accurate understanding of the physical injuries and psychological effects caused by snares, and this can only be delivered by independent experts.

Q64. What are your views on the proposal to create a new offence of tampering with a lawfully set snare?

We strongly oppose this proposal.

The consultation document suggests that “tampering with snares, even for the best of reasons, can sometimes (even unwittingly) make their effects more deadly and cruel.”

We agree that the effects of snares are deadly and cruel, but if the Scottish Government wishes to ensure that animals are not caused suffering by snares, it has the simple option of banning these traps at its disposal. If snares are not to be banned, and there is genuine concern that their effects are being exacerbated by well-meaning interference, it would be possible to mount a public education campaign to explain the potential hazards of distressing or further injuring an animal in a snare, or allowing it to escape before its injuries can be assessed and treated. This would be preferable to creating a new offence to criminalise people who are trying to help animals.

The consultation refers to tampering with a lawfully set snare “even for the best of reasons” which suggests that this will be a strict liability offence and the fact that an attempt was being made to relieve the suffering of an animal found in a snare will be no defence against prosecution.

Should there ever be evidence that an individual has tampered with a lawfully set snare for any malign purpose, Scots law already contains provisions which are more than adequate to protect the interests of landowners and snare operators: the common law offence of malicious mischief and the statutory offence of vandalism as described at s.52 of the Criminal Law (Consolidation) (Scotland) Act 1995. To the best of our knowledge there have been no prosecutions for tampering with snares using either of these offences and it cannot therefore be said that the provisions have been tested and found to be inadequate.

In practical terms, it would be extremely difficult to define the act of “tampering”. It is well known that the struggles of a trapped animal can twist and damage the wire so that the snare no longer runs free, and is no longer legal. A person coming upon an animal in a snare might well need to ascertain that its action remains free-running, as the law requires, before deciding whether to call the authorities.

There are also difficulties, which would be beyond the knowledge of the average passer-by, in identifying which types of snare are currently legal. It is difficult to separate snares clearly into self-locking and free-running categories. The original consultation of the future of snaring issued in 2006 by the former Scottish Executive invited consideration of clarifying the terms “self-locking” and “free-running”, for the purposes of legislation, and proposed a definition specifying that “a snare can only be judged as free-running by testing its action”. The matter of definition has not, however, been taken forward, leaving continued uncertainty over what is legal and what is not.

We refer also to the use of snares to trap mountain hares. We believe that a licence is required for such activity in terms of the Conservation (Natural Habitats) Regulations 1994, as amended by the Conservation (Natural Habitats) (Scotland) Regulations 2007. The Scottish Government issues licences to land managers for this purpose. Yet gamekeepers and other land managers dispute the requirement for a licence. In these

circumstances, it would be unreasonable to expect a person who comes upon a trapped mountain hare to resolve the legal issues before deciding what to do to relieve the animal's suffering.

Scotland's citizens should be allowed to show care and compassion to trapped animals without fear of prosecution. This proposed new criminal offence is unnecessary and unworkable.

BADGERS

Q65. What are your views on the proposal to amend the 1992 Act to provide that an offence shall be committed where a person undertook the relevant activity directly or knowingly caused or permitted the act to be done?

We agree with this proposal.

Q66. What are your views on the proposal to amend the 1992 Act to include offences relating to the killing of badgers within the category of offences which may be tried summarily or on indictment?

We agree that the 1992 Act should be amended to provide that offences committed under Section 1 of the Act (related to the killing of badgers) are included with the category of offences which may be dealt with either summarily or on indictment.

Advocates for Animals
Edinburgh
4 September 2009

SECTION 7 – RESPONDENT INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name	Advocates for Animals
Title	Mrs
Surname	Anderson
Forename	Libby

2. Postal Address

10 Queensferry Street
Edinburgh
EH2 4PG

0131-225 6039

Email: policy@advocatesforanimals.org

3. Permissions

I am responding as...

Organisation

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)? **YES**

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
Are you content for your **response** to be made available? **YES**

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Yes, make my response, name and address all available

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

YES