

SPICe Briefing

The Wildlife and Natural Environment (Scotland) Bill

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This briefing has been prepared for Members of the Rural Affairs and Environment Committee. It contains background information and a description of the main provisions in the Wildlife and Natural Environment (Scotland) Bill on: game law; snares; non-native species; species licensing; deer; badgers; muirburn; and Sites of Special Scientific Interest. The proposals set out in a Government consultation published in June 2009 are discussed, followed by a description of the main proposals in the Bill.



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EXECUTIVE SUMMARY

The Scottish Government consulted on proposals for a Wildlife and Natural Environment Bill during 2009. The Bill was published on the 10 June 2010 and it contains 35 sections in six parts and a schedule. The Bill seeks to deliver a range of measures which will update legislation protecting Scottish wildlife and ensure legislation which regulates and manages the natural environment is fit for purpose. The Bill seeks to: modernise game law; abolish the designation 'areas of special protection'; improve snaring practice; regulate invasive non-native species; change the licensing system for protected species; amend current arrangements for deer management and deer stalking; strengthen protection of badgers; change how muirburn can be practised; and make operational changes to the management of Sites of Special Scientific Interest.

Part 2 of the Bill would repeal game licences and game dealers' licences. "Game" in the context of the Bill are game birds – pheasants, partridge and grouse, and "ground game" – hares and rabbits. The Bill seeks to modernise poaching offences and bring game law within the scope of the Wildlife and Countryside Act 1981 [the 1981 Act]. Landowners' rights to apprehend suspects of poaching would be repealed and poaching provisions would be enforced by the police. The Government argues that these powers are exceptional and without justification. The Bill would create a new close season for killing or taking hares. The Bill would preserve the present position in relation to poaching offences, which is that convictions can be made on single witness evidence. Apart from illegally taking bird eggs, other offences under the 1981 Act require corroboration.

Section 4 of the Bill repeals the designation Areas of Special Protection (ASP). Originally known as "bird sanctuaries", they provided protection for wild birds, their nests and their young. SNH has advised that there is no need for an ASP in any of the eight areas currently designated and the Government is therefore satisfied that the designation can be abolished.

Section 13 of the bill addresses snaring. Snaring is currently permitted in Scotland, but is regulated under section 11 of the 1981 Act and the Snares (Scotland) Order 2010. Provisions in the Bill would incorporate the provisions of the Snares (Scotland) Order 2010 into the 1981 Act. The Order brought four changes into effect earlier this year: that snares must be fitted with stops; that snares must be checked to ensure they are free-running; that snares must be staked or anchored in place; and that snares must not be set so that animals become suspended or drowned.

The Bill would also introduce new provisions related to identification of snares with tags, training of snare operators and a presumption that the tag identifies the person setting the snare, should proceedings be brought.

Sections 14-17 deal with non-native species. Non-native species are those which have been introduced outside their 'natural' or native ranges by humans. Invasive non-native species (INNS) are non-native species which cause unwanted environmental, economic or social impacts as a result of their ability to spread rapidly or become dominant in ecosystems. Current legislation on non-native species has been criticised on a number of grounds. The Bill seeks to strengthen and consolidate current law in this area. New offences in the Bill seek to ban the release of an animal or plant outwith its native range, or any other plant or animal specified by

Scottish Ministers. This is known as a “general no-release approach”. An exception is made for game species, and provision is made to allow re-introductions (such as beaver). Inserted section 14ZC into the 1981 Act would allow the prohibition of the keeping of invasive animals or plants, and inserted new section 14B enables Ministers to require the notification of invasive animals and plants. Inserted section 14P provides definitions.

Section 15 inserts a new section into the 1981 Act which relates to a code of practice which *may* be produced to provide practical guidance on INNS and the requirements of the 1981 Act.

Section 16 introduces a series of new provisions related to species control orders. Species control orders would be made by a “relevant body”, and would identify the presence of a named invasive animal or plant at a particular location and specify that certain operations be undertaken by named individuals or organisations to control that species by particular dates. A “relevant body” refers to Scottish Ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency or the Forestry Commission.

Sections 18 and 19 of the Bill deal with species licensing. A licence can authorise an act that would otherwise be unlawful. The Bill seeks to amend the sections on species licensing in the Wildlife and Countryside Act 1981 (section 16 and 26), and schedule 6 of that Act. The Bill would extend the circumstances for which a licence can be granted to include “any other social, economic or environmental purpose”. The licensing authority must also be satisfied that the licence authorises acts that would contribute towards social, economic or environmental benefit and that there is no other satisfactory solution. Scottish Ministers are the licensing authority. The Bill would provide that they may delegate this authority to SNH or a local authority.

Section 19 removes some species from Schedule 6 of the 1981 Act. This removes duplication of protection as these species receive legal protection under The Conservation (Natural Habitats &c.) Regulations 1994 (as amended), which implement EU species protection legislation.

The proposals in Part 3 of the Bill have their origin in a review of the Deer (Scotland) Act 1996 carried out by the Deer Commission, the results of which formed the basis for the Government’s consultation on the Bill. SNH will assume the Deer Commission’s functions when section 1 of the Public Services Reform (Scotland) Act 2010 is brought into force later this year.

The main proposals in Part 3 of the Bill are:

- SNH will draw up a statutory code of conduct on sustainable deer management, which would be approved by Ministers and laid before Parliament
- A new function for SNH in relation to the management of urban deer
- Revisions to the powers of SNH to intervene in deer management where high deer numbers are causing damage to forestry, farming, natural heritage or the public interest or pose a risk to public safety or deer welfare.
- Backstop powers for the Government to introduce a competence requirement for shooting deer if a voluntary approach to training and assessing competence does not work by 2014
- Making owner-occupiers rights’ to shoot deer to protect farmland / forestry subject to a general licence.

The Government has chosen not to go ahead with some of the proposals in the consultation. In particular, the Bill does not contain a duty of sustainable deer management; proposals to allow the close seasons for deer to be determined locally by deer management groups; or proposals to make statutory provision for deer management groups.

Section 27 of the Bill would amend provisions in the protection of Badgers Act 1992. The 1992 Act created offences of taking, injuring or killing badgers and offences relating to cruelty and selling of badgers. The Bill would insert sections to create new offences of “knowingly causing or permitting” such acts. The Bill would make changes to licensing in relation to badgers, so that it is consistent with other species licensing. Scottish Ministers would become the licensing authority, but could delegate this function to SNH or local authorities. The Bill would also increase the maximum penalty for certain offences, such as killing a badger, to address current anomalies.

Section 28 of the Bill amends sections 23-27 of the Hill Farming Act 1946 related to muirburn. Muirburn is a (mainly upland) land management technique, and is the act of controlled burning of vegetation in open, treeless, semi-natural habitats to stimulate new growth. A new section 23 would be inserted into the 1946 Act which would establish: a “standard muirburn season” (1 October until 15 April) and; an “extended muirburn season” (16 April until 30 April). This means that it would no longer ordinarily be permitted to make muirburn between 1 and 15 May on land situated more than 450 metres above sea level. The Bill makes provisions for Scottish Ministers, by order, to modify muirburn seasons. The Bill would insert section 23B into the 1946 Act to allow Scottish Ministers to grant a licence for muirburn outwith the standard and extended seasons. Such a licence would be granted for the purpose of managing the natural environment, research or public safety. This power may be delegated to SNH.

Sections 29-32 relate to SSSIs and would amend the Nature Conservation (Scotland) Act 2004. SSSIs are those areas of land and water that SNH considers best represent Scotland’s natural heritage. The Bill would provide for the combination of two or more SSSI into a single site and allow the denotification of SSSIs that are no longer considered of special interest because of damage to or destruction of features as a consequence of authorised development.

Section 31 would amend the 2004 Act so that operations by public bodies can be carried out without consent from SNH. Section 32 relates to restoration notices. A restoration notice is a written notice which would be issued by SNH to the owner of a SSSI and would require that person to take steps to restore the damaged natural features “so far as is reasonably practicable”, to the condition it would have been in if no damage had occurred.

INTRODUCTION

In June 2009 the Scottish Government (2009a) published a [consultation document](#) on proposals for a Wildlife and Natural Environment Bill. The consultation ran until 4 September 2009, and 456 responses were received. The [responses](#) and an [analysis of the responses](#) have been published online ([Scottish Government](#) and Scottish Government 2010a). The Government has also published a report on the consultation, which sets out how the proposals are being taken forward in the Bill (Scottish Government 2010b). The Government's intention to introduce a Wildlife and Environment Bill was confirmed in the First Minister's legislative statement to Parliament on the 3 September 2009 (Scottish Parliament 2009a).

The Bill was published on the 10 June 2010, along with a Policy Memorandum, Explanatory Notes and other accompanying documents. A Delegated Powers Memorandum has also been published. The Bill contains 35 sections in six parts and a schedule:

- Part 1 of the Bill contains one section which defines legal references used in the Bill e.g. that "the 1981 Act" refers to the Wildlife and Countryside Act 1981 (c.69)
- Part 2 of the Bill contains amendments to the 1981 Act relating to game law, the law on the use of snares, the control of invasive non-native species, and on species licensing
- Part 3 of the Bill contains amendments to the law on deer management that the Bill would make to the Deer (Scotland) Act 1996 (c.58) [the 1996 Act]
- Part 4 of the Bill contains amendments to the law protecting badgers that the Bill would make to the Protection of Badgers Act 1992 (c.51) and amendments to the law on "muirburn" (burning of upland vegetation) that the Bill would make to the Hill Farming Act 1946 (c.73)
- Part 5 of the Bill contains amendments that the Bill would make to the law on Sites of Special Scientific Interest (SSSIs) in the Nature Conservation (Scotland) Act 2004 (asp 6) [the 2004 Act]
- Part 6 of the Bill contains three sections on general provisions.

PART 2 - GAME LAW

"Game" in the context of the Bill refers to game birds (grouse; partridges and pheasants) and ground game (e.g. hares and rabbits). Separate laws regulate game fishing. These laws were consolidated in 2003 and would not be affected by the Bill.¹ Certain other species of wildfowl and wading birds can legally be shot in Scotland. The shooting of these so-called "quarry species" are regulated under the Wildlife and Countryside Act 1981 (as amended) and would not be affected by the Bill.

Three species of grouse, two species of partridge and the pheasant in Scotland are included in the definition of "game"². The red grouse (*Lagopus lagopus scotius*) lives on heather moorland. Grouse moors, which mainly occur in the drier eastern Scotland, are managed through heather burning and predator control to produce sufficient stocks of red grouse for shooting. The Game and Wildlife Conservation Trust (2009) has estimated that grouse shooting is worth around £30 million to the Scottish economy. Owing to their diet, red grouse are difficult to keep in captivity and they are not captive bred and released as some other game birds are. Black grouse (*Tetrao*

¹ In the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (asp 15)

² The fourth species of grouse present in Scotland, the capercaillie (*Tetrao urogallus*) is protected from hunting under the Wildlife and Countryside Act 1981.

tetrix) are birds of the woodland edge. Their numbers have declined over the last century, and they are rarely hunted. Ptarmigan (*Lagopus mutus*) are a bird of the highest mountain tops. Two species of partridge are present in Scotland, the native Grey partridge (*Perdix perdix*) and the introduced Red-legged partridge (*Alectoris rufa*), which is native to continental Europe. The pheasant (*Phasianus colchicus*) is also introduced, and is widespread in woodland and farmland. Both the pheasant and the Red-legged partridge are commonly captive bred and released for shooting, to supplement the numbers of wild-breeding birds. A study by PACEC (2006a) which considered the economic impact of all game shooting, deerstalking, wildfowling and pest control found that in Scotland, shooting sports had a Gross Value Added of £240m, supporting 11,000 full-time equivalent jobs. There was a total of 1.5 million shooting days offered by 8,800 providers, and 200,000 people in Scotland participated in shooting. The management of over half of Scotland's land area is influenced by shooting. The figure below shows the species included within the definition of game.

Figure 1 – Game species



Top row, from left (iStockphoto image credit in brackets): Black grouse (Icarus Images), Red Grouse (Keith J Smith), Ptarmigan (Gentoo Multimedia Limited). Middle row: pheasant (Snowhill Photography), Red-legged partridge (Ruth Black), Grey partridge (Karel Broz). Bottom row: rabbit (Andrew Howe), Brown hare (Markus Divis), Mountain hare (Peter Wey).

CURRENT GAME LAW

The laws regulating game in Scotland date from the eighteenth and nineteenth centuries. They cover three main areas:

1. game licensing - governs who may take/kill game, and deal in game
2. poaching - the offence of illegally taking game, the penalties involved, and the enforcement mechanisms

3. close seasons - the dates between which game may be taken/killed.

Game law is governed by the following statutes:

- the Game (Scotland) Act 1772 (c54)
- the Game Act 1831 (c32)
- the Night Poaching Act 1828 (c69)
- the Game (Scotland) Act 1832 (c68)
- the Game Licences Act 1860 (c90)
- the Poaching Prevention Act 1862 (c114)

Under the Game Licences Act 1860, before anyone (with some statutory exemptions) may take or kill game they must obtain a licence to do so. An annual licence costs £6. This cost has not changed since 1968.

The Game Act 1831 and Game Licences Act 1860 together regulate who can sell game and the conditions of being a licensed dealer. Anyone intending to deal in game must obtain two licences - a local authority licence and an excise licence. The excise licence costs £4, and like the licence to take or kill game, the cost has not changed since 1968. The cost of the local authority licence is set by individual local authorities and tends to be similarly low. Under section 4 of the Game Act 1831, it is an offence to buy or sell game birds after ten days from the start of the close season of the relevant species. This close season on dealing was implemented to ensure that there was no market for meat illegally obtained during the close season, and to help game bird populations. The advent of modern refrigeration since these laws were made now means it is possible to sell game during the close season, that has been killed in the shooting season.

The game-poaching laws create offences and enforcement mechanisms for the unlawful taking of game in Scotland. The legislation underpinning poaching offences dates from the 19th century and has not been substantially modernised since that time. The language is often archaic and some of the terminology no longer has common usage. This can give rise to a lack of clarity of meaning and anomalies. The enforcement provisions are also outdated with, for example, police having few specific powers to proactively intervene where poaching is suspected, and landowners or their representative (e.g. gamekeepers) having powers to stop and apprehend people they suspect might be involved in poaching. For these reasons, the Scottish Government considers that there is a case for considering the modernisation and consolidation of poaching law.

In England and Wales the Regulatory Reform (Game) Order 2007 came into force on the 1 August 2007, and removed the requirement for game licences for either taking or killing game, or dealing in game. It also removed restrictions on dealing in game in the close season and replaced this with an offence of dealing in game which had been killed or taken illegally ([Business link](#)). The laws relating to poaching and close seasons for game birds have not been amended in England and Wales. In Northern Ireland, a [Wildlife and Natural Environment Bill](#) which is currently being considered by the Northern Ireland Assembly seeks to repeal game licences and game dealers' licences.

PROPOSALS IN THE CONSULTATION

The consultation on the Bill contained the following proposals related to game laws:

- Three options for modernising game law were suggested: either amending the existing laws; consolidating them into a single Act; or consolidating them into the Wildlife and Countryside Act 1981. The consultation sought views on which would be the best option
- Removing the requirement under the Game Licences Act 1860 to have a game licence. Two alternatives which could be considered were to issue electronic licences; or to increase the cost of licences and use revenues for game conservation, administration and enforcement
- Removing the requirement to have a licence to deal in game and replacing the restriction on selling game birds outwith the season with an offence of selling unlawfully killed game
- Modernising poaching laws to ensure consistency of terms and clarity of language, and standardise penalties. Giving police similar powers to enforce anti-poaching laws as they have to act against wildlife crime under the Wildlife and Countryside Act 1981. Considering whether landowners should continue to have powers to apprehend those they suspect of poaching, and whether single witness evidence should continue to be sufficient in poaching cases
- Giving Ministers powers to alter close seasons for game birds, and to make orders protecting game birds outside the close season
- Standardising penalties for killing/taking game birds in the close season with the penalty for taking other quarry species
- Allowing game birds to be killed/taken in the close season for certain purposes under licence (issued under the Wildlife and Countryside Act 1981).

PROPOSALS IN THE BILL

The Bill would repeal the Game Acts and consolidate new provisions on game into the Wildlife and Countryside Act 1981 (c.69) [the 1981 Act].

The Government has decided to go ahead with the proposal to abolish the requirements for game licences and licences to deal in game. The Bill would therefore repeal the Game Acts which required these licences.³ Since refrigeration options mean that game that has been killed during the shooting season could be sold throughout the year, the Bill would also repeal the restriction on selling game during the close season. To protect game, the Bill would provide that it is an offence to sell game that has been killed outside the shooting season, or that has been poached (i.e. taken without permission). Section 5 of the Bill contains amendments to the 1981 Act which would have this effect. It would also make amendments to allow game birds bred in captivity, and game bird eggs to be sold. Section 6 of the Bill would create a new close season for hares. This would be from 1 March to 31 July for mountain hares and 1 February to 30 September for brown hares.⁴

³ the Schedule contains a list of Acts the Bill would repeal in whole or in part.

⁴ The only current restriction on the taking of hares (and rabbits) is a restriction on the right of an occupier to kill or take them on moorlands and unimproved grassland between the 11 December and the 31 March, by virtue of

The Bill seeks to modernise game poaching offences. It would do this by repealing the Game Acts and bringing game birds, hares and rabbits within the scope of the 1981 Act. Section 2 of the Bill would change the interpretation provisions of the 1981 Act to bring game birds within its scope. Section 3 of the Bill would amend the definition of “wild bird” in the 1981 Act to apply it to game birds which are bred in captivity and then released. Section 3 of the Bill would also amend the 1981 Act to create closed seasons for game birds, during which they could not be hunted as game. These would be the same as the existing closed seasons under the Game Acts.⁵ Some species of game birds are bred in captivity, and then released. As part of this gamekeepers sometimes “catch up” birds at the end of the shooting season to use them in captive breeding programmes. The Bill would amend the 1981 Act to allow this to continue.

Section 3 of the Bill would insert text into section 2 of the 1981 Act to allow game birds to be killed or taken outside the close season and provide that only those with the legal right, or who had the permission of someone with that right, may kill or take game birds. Poaching would be the taking of a game bird without that right or permission, which would be an offence under section 1 of the 1981 Act.⁶ Section 7 of the Bill would insert new sections 11E and 11F into the 1981 Act which would create an offence of poaching hares or rabbits without legal right or permission. Section 8 of the Bill would insert a new section 11G to create an offence of selling or possessing hares or rabbits taken illegally. The current distinctions between different poaching offences depending on the number of people involved, and whether the poaching occurs by day or by night would be removed. Poaching offences would be subject to the same penalties as other offences under the 1981 Act – these are imprisonment of up to six months and/or a fine of up to level 5 on the standard scale (currently £5,000).

The Bill would repeal the unique powers that landowners have to apprehend suspected poachers and provide for standard police enforcement powers to apply to poaching offences. The current situation, whereby poaching offences can be prosecuted on the basis of single witness evidence, would be preserved by section 12 of the Bill. This section would amend section 19A of the 1981 Act to allow convictions for game poaching offences to be made on single witness evidence. The only other conviction under the 1981 Act which would be able to be made on single witness evidence is of illegally taking or destroying a bird’s egg.

AREAS OF SPECIAL PROTECTION

Section 4 repeals section 3 of the 1981 Act related to Areas of Special Protection. This is based on the premise that the protective provisions afforded by this designation are now largely duplicated by other provisions. Eight areas of special protection for birds will be abolished.

PART 2 – SNARES

Snaring involves the use of flexible material to capture and restrain an animal. The UK is one of a small number of European countries in which snaring is a permitted wildlife management technique. Other European countries that still allow snares are France, Ireland, Spain and Belgium. In the UK snares are used to capture and restrain target animals for despatch, rather than to kill them. Although snaring appears to be most commonly used for the control of foxes and rabbits they may also be used to capture other species (e.g. mink, grey squirrel) and for a

section 1 of the Ground Game Act 1880. There are no restrictions on taking hares (or rabbits) by persons other than the occupier, or on killing or taking hares on improved grassland and arable land.

⁵ Table 4 in the Annex shows the current close seasons for game and quarry species in Scotland

⁶ Section 1 of the 1981 Act contains an offence of killing or taking any wild bird. Sections 2 and 4 of the Act contain exceptions to this offence. The Bill would amend section 2 to include the killing or taking of game birds outside the close season.

variety of other purposes (e.g. they have been chosen as the method of choice on grounds of efficiency and humaneness to catch foxes in wildlife research) (Kirkwood et al, 2005).

A review on snaring published as part of the [Report of the Independent Working Group on Snares](#) (Kirkwood et al, 2005), provides detailed information on the history of snares, design and the use of snares, the welfare of animals trapped in snares, and the impact of snares on non-target species. This review makes a number of points:

- In modern use, snares are set to capture and restrain so that target animals can then be humanely despatched and any non-targets can be released
- The efficacy and humaneness of snares needs to be assessed in comparison with other methods. An ideal wildlife capture method would, whilst being highly effective in achieving its objective, present no risks to welfare and would be entirely specific for the target species. No such method exists
- The welfare impact of snaring ranges from apparently mild (e.g. as reported when foxes are snared for scientific research purposes) to extremely severe (where animals suffer lingering deaths with severe injuries). There has been no detailed or recent survey of the welfare impact of snares used under typical field conditions so it is not possible to judge the usual welfare impact
- The proportion of non-target species caught in snares set for foxes is often quite high (ranging from 21-69%). Whilst the capture rate of non-targets can be reduced through good field-craft it may be very difficult, in using snares to catch foxes, to reduce the overall proportion of non-target animals caught to below about 40%. There appear to be no data on the rate of capture of non-target species associated with setting snares for rabbits.

[Snaring in Scotland: A Practitioners' Guide](#), (May 2009) was produced by the Game and Wildlife Conservation Trust, Scottish Gamekeepers Association and British Association for Shooting and Conservation (Scotland) and endorsed by the Scottish Government. It sets out information about current law and good practice.

CURRENT LEGISLATION

Snaring in Scotland is permitted by the Wildlife and Countryside Act 1981. The Nature Conservation (Scotland) Act 2004 amends the 1981 Act so that restrictions are imposed on the use of snares. It is an offence to:

- intentionally or recklessly kill, injure or take any wild animal in Schedule 5, such as pine marten and red squirrel (section 9 (1))
- set in position or otherwise uses any self-locking snare or a snare of any other type specified in an order made by the Scottish Ministers (section 11(1a))
- set in position or otherwise use any other type of snare which is either of such a nature or so placed (or both) as to be calculated to cause unnecessary suffering to any animal coming into contact with it or knowingly cause or permit such acts to be done (section 11 (1aa and 1d))
- set in position any snare likely to cause bodily injury to any wild animal included in Schedule 6, such as badger, pine marten, otter, red squirrel, wild cat, polecat and hedgehog (section 11(2a))

- set in position a snare or knowingly cause or permit a snare to be so set and fail to inspect it at least once every day at intervals of no more than 24 hours (section 11(3))
- fail to release or remove an animal, whether alive or dead, while carrying out such an inspection of snares (section 11(3A))
- be in possession of, sell or offer for sale any snare capable of operating as a self-locking snare, without reasonable excuse (section 11 (3C))
- be in possession of any snare on land or to set any snare on land without the permission of the owner or occupier (section 11 (3D)).

THE SNARES (SCOTLAND) ORDER 2010

The 2010 order came into force on the 11 March 2010, and brought four changes into effect:

1. Stops: Snares must be fitted with effective stops to prevent nooses from closing too far. The aim being to avoid strangulation of the target species
2. Free running snares: Each snare must be checked when it is set and subsequently at least once every 24 hours to ensure that it is free running
3. Anchors: All snares that are not staked in place must be fixed with an effective anchor to prevent them being dragged
4. Location: Snares must never be set on or near features that could result in animals becoming fully or partially suspended or drowned.

According to the policy memorandum which accompanies the Bill, changes in the 2010 Order were made via an enabling order in the 1981 Act. However, those powers were insufficient to allow the incorporation of ID tags and training provisions into the 1981 Act. The Bill therefore brings forward these additional provisions and incorporates all of the 2010 order provisions within it so that all relevant legislation is in a single place.

PROPOSALS IN THE CONSULTATION

The Bill consultation document (Scottish Government, 2009) proposed two changes to primary legislation:

1. A new offence of tampering with a lawfully set snare
2. A new land management industry accreditation scheme which will mean that within a fixed period no one without training will be allowed to set a snare.

The analysis of responses to the Government consultation (Scottish Government, 2010a) showed that the majority of respondents were in favour of a new offence of tampering with a lawfully set snare (44% agreed outright, and 36% agreed with caveats). The report highlighted responses that expressed concern about how such an offence would work in practice and the need for educational support for practitioners and the public if such a provision were implemented.

On the snaring accreditation scheme, the analysis of responses to the consultation (Scottish Government, 2010a) shows that 29% of respondents agreed with such a scheme outright, and

25% agreed to an accreditation scheme with caveats. Forty-seven per cent disagreed to such a scheme. The report sets out the main concerns from the responses. These were: first that an accreditation scheme would be invalid as it relates to something that should be banned; second, that the scheme would be too bureaucratic and impractical to implement; and third, that there were concerns about how this scheme would impact on animal welfare and biodiversity.

PROPOSALS IN THE BILL

The proposal to introduce a new offence of tampering with a lawfully set snare has not been taken forward in the Bill. The Policy Memorandum explains that there is already legislation in place that could deal with this, such as the Criminal Law (Consolidation) (Scotland) Act 1995 (section 52 dealing with vandalism), and the Criminal Justice and Public Order Act 1994 (section 68 dealing with aggravated trespass).

The other proposals from the consultation are found in Section 13 of the Bill. Provisions in this section seek to:

- replace the Snares (Scotland) Order 2010 (Section 13 (2a))
- re-organise (repeal and re-introduce) some sections of the 1981 Act (Section 13 (2b) and section 13(3) inserting subsections 11B and 11C into 1981 Act), and
- introduce new provisions related to identification and training of snare operators and a presumption arising from use of the identification (sections 13 (3) inserting section 11A and 11D into the 1981 Act).

Section 13 (2) adds to the provisions on the prohibition of certain methods of killing or taking wild animals under section 11a of the 1981 Act. Section 11 (1A) is inserted and defines the type of snare which is calculated to “cause unnecessary suffering” (a term found in section 11(1) (aa) of the 1981 Act). This includes a snare which is not fitted with a stop to prevent the snare from tightening beyond specified circumference (which differs for different species), a snare which is not staked to the ground or attached to an object, or a snare where an animal is likely to become suspended or drowned.

Section 13 (2b) would repeal section 11 subsections 3, 3A, 3B and 3D of the 1981 Act. Subsections 3, 3A and 3B relate to inspection, removing or releasing of snared animals, and an associated offence. These issues are now covered by the newly inserted 11B. Repealed subsection 3D relates to authorisation from the landowner for snares. This is now covered by newly inserted section 11C.

Section 13 (3) proposes to insert a number of section into the 1981 Act (sections 11A to 11D). Inserted section 11A provides for the compulsory fitting of a tag on a snare with the identification number of the snare operator, and (for foxes, brown hares or rabbits) a statement on the type of animal the snare is intended for.

Snare identification numbers would be available from the chief constable, once he/she is “satisfied that the applicant has been trained” (section 13(3)). Scottish Ministers may make provisions regarding various aspects of snares, training and identification tags (inserted section 11(8) 1981 Act).

Inserted section 11B into the 1981 Act relates to the duty to inspect snares at least once every day at intervals of no more than 24 hours. Inspection is required to check that the snare is free-running and whether an animal is caught. “Free-running” means not self-locking or capable of

self-locking, and subject to limited restriction of movement. This replaces provisions in the Snares (Scotland) Order 2010.

Inserted section 11C would require authorisation from the owner or occupier of the land in order to possess or set a snare on that land. This reorganises of current provisions in the 1981 Act, but does not change their effect.

Inserted section 11D relates to the presumption that the identification number on the snare identifies the person who sets the snare. This would be relevant if there were subsequent proceedings relating to the snaring provisions. Finally, section 17 of the 1981 Act would be amended by section 13 (5) of the Bill, to make it an offence to make a false statement in applying for a snare identification number.

PART 2 - NON-NATIVE SPECIES

Non-native species are those which have been introduced outside of their 'natural' or native ranges by humans. Invasive non-native species (INNS) are non-native species which cause damaging environmental or socioeconomic impacts as a result of their ability to spread rapidly or become dominant in ecosystems. Not all non-native species are invasive.

INNS have been identified as a major threat to global biodiversity alongside habitat loss and climate change. Where established they can cause severe environmental problems and incur economic costs both in terms of the damage caused and the costs of control. [SPICe briefing 10/33](#) (Street, 2010) considers INNS in detail.

CURRENT LEGISLATION

There is a range of international and national legislation relating to invasive non-native species. In 2003 Defra published a review of non-native species policy (Defra 2003). The GB Non-Native Species Secretariat (GBNNS) also provides useful information on current [legislation](#).

International commitments

There are over 45 international agreements, non-binding documents and codes of conduct which contain provision for the introduction, control and eradication of invasive non-native species (Fasham and Trumper 2001). Of these, five are legally binding:

1. Convention on Biological Diversity (CBD) (1993). Under Article 8h, each Contracting Party shall, as far as possible and appropriate "Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species". The 6th Conference of the Parties adopted a set of [guiding principles](#) on invasive non-native species.
2. United Nations Convention on the Law of the Sea (UNCLOS) (1994)
3. International Plant Protection Convention (IPPC) (1951)
4. WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) (1995)
5. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1975)

European legislation

Europe meets its obligations to control the introduction of non-native species under the Bern Convention through the EC Birds Directive (2009/147/EC) and EC Habitats Directive (92/43/EC), and the Water Framework Directive (2000/60/EC).

- Article 11 of the Birds Directive states that “member states shall see that any introduction of species of bird which do not occur naturally in the wild state in the European territory of the member states does not prejudice the local flora and fauna.”
- Article 22 of the Habitats Directive requires member states to “ensure that the deliberate introduction into the wild of any species which is not native to their territory is regulated so as not to prejudice natural habitats within their natural range or the wild native fauna and flora and, if they consider it necessary, prohibit such introduction.”
- Under the Water Framework Directive (WFD) (as implemented in Scotland through the Water Environment and Water Services (Scotland) Act 2003 (asp3)) there is a requirement to protect and improve Scotland’s water environment. This includes preventing deterioration of aquatic ecosystems and, where possible, restoring water bodies to ‘good ecological status’ by 2015. The presence of non native species can impact on this status (UKTAG 2007).

Domestic legislation

The Wildlife and Countryside Act (1981) (section 14) is the main piece of legislation regulating the release of non-native species in Great Britain. It transposes the requirements of the Habitats and Birds Directives into domestic legislation.

There are different provisions for animals and plants with a general prohibition on the introduction of any non-native animal species, and a planting prohibition for specified plant species only. Fungi, lichens and micro-organisms are not included.

Under Section 14(1) of the Act, it is an offence to “*release or cause to escape into the wild*” any animal which:

- is of a kind which is not ordinarily resident in and is not a regular visitor to Great Britain in the wild state; or
- is included in Schedule 9 part I.

Under Section 14(2) of the Act, it is an offence to “plant or otherwise cause to grow in the wild” any plant on Schedule 9 part II. Guidance on definitions relevant here has been provided and updated in England, but the Scottish Government has not issued such guidance, although it is the sort of thing that may be included in any future code of practice on INNS.

The Nature Conservation (Scotland) Act (2004) (asp 6) amends the 1981 Act in Scotland to provide powers for Scottish Ministers to prohibit the sale of non-native species. It also replaces the reference to release of animals ‘*into the wild*’ to release ‘*from captivity*’.

PROPOSALS IN THE CONSULTATION

The Scottish Government (2009a) consulted on proposed legislative reform to address the following perceived difficulties with current provisions regarding INNS (largely those within the Wildlife and Countryside Act 1981):

- *Definitions* – there are some key terms such as ‘in the wild’ which lack definition in the 1981 Act
- *No rapid updating process* – the process to update lists in Schedule 9 requires a 12 week consultation
- *Lack of prevention* – the 1981 Act is seen as being ineffective in preventing further introductions of non-native animals that have been previously released, as once a species is ‘ordinarily-resident’ section 14 no longer applies
- *Lengthy lists* – the list of species on Schedule 9 will grow as more species become established
- *Fungi and micro-organisms* – fungi and micro-organisms are not included in the 1981 Act
- *Translocations of species outside their natural ranges* – introduction of species which are native to Scotland but non-native to islands or specific water bodies are not currently included in the 1981 Act but can cause significant problems
- *No ability to control* – there is no requirement in section 14 of the 1981 Act to control or deal with established INNS
- *Responsibility* – current policy does not delegate responsibility for addressing INNS issues to any one government organisation
- *Individual responsibility and access* – there is currently no power to require individuals to control specified INNS or to allow access to land to undertake control without the permission of the land owner.

On the whole for non-native species there was a high level of agreement with the Government’s proposals (Scottish Government 2010a). Areas of disagreement were as follows:

- There was some concern among respondents that proposals for a ‘no-release’ general presumption applied to all non-native species and not just *invasive* non-native species. The Government response was to proceed with reference to *non-native* species in order to make the legislation precautionary and preventative
- Proposals relating to INNS control were largely met with agreement but some respondents added caveats relating to the fair and transparent use of control powers and the right to appeal
- While there was majority agreement with proposals for additional powers relating to causing or permitting an INNS offence, these proposals were not progressed as legislative provision within Section 293 of the Criminal Procedure (Scotland) Act 1995 was considered sufficient.

PROPOSALS IN THE BILL

The aim of this part of the Bill is to provide a new framework to enable control of invasive non-native species. In part 2 of the Wildlife and Natural Environment Bill, sections 14-17 deal with non-native species. Sections 14-16 would amend section 14 of the 1981 Act. Section 17 would make further amendments to a number of other provisions in the 1981 Act.

The Bill proposes to insert Section 14P into the 1981 Act which defines various terms. In particular it defines “invasive” as an animal or plant which would be likely to have a significant adverse impact on: biodiversity, other environmental interests; or social or economic interest (section 16 of the Bill).

Section 14(2) of the Bill would insert new subsections 14(1) and (2) into the 1981 Act which would provide that it is an offence:

- to release or allow to escape from captivity any animal to a place outwith its native range. This replaces the former offence which relates to the release or escape into the wild of an animal which is of a kind not ordinarily resident in and is not a regular visitor to Great Britain in a wild state
- to release or allow to escape from captivity any other animal specified in an order made by Scottish Ministers under that section and inserted section 14(2C). This replaces the former offence which relates to an animal of a kind listed in Schedule 9 to the 1981 Act
- to cause any animal outwith the control of any person to be at a place outwith its native range
- to plant or otherwise cause to grow any plant in the wild outwith its native range. This replaces the former offence which relates to a plant of a kind listed in Schedule 9 to the 1981 Act.

Section 14 (3) would insert a new section 14ZC to the 1981 Act, which prohibits the keeping of invasive non-native species of animals or plants, specified by order.

Section 14 (4) would amend section 14A in the 1981 Act (prohibiting the sale of invasive animals or plants) so that it applies to invasive species.

Section 14 (5) would insert section 14B which relates to notification of the presence of non-native animals or plants, specified by order.

Section 15 of the Bill would insert a new section (14C) into the 1981 Act. This states that “Scottish Ministers may issue a code of practice for the purpose of providing practical guidance” related to the new provisions. This code of practice would define many relevant terms such as “captivity”, which type of plant is growing outwith its range, and which types of plants and animals are considered to be invasive.

A number of provisions would be inserted into the 1981 Act related to species control orders. A species control order is an order which can be made by any “relevant body”, which identifies the presence of a named invasive animal or plant at a particular location. The Scottish Ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency or the Forestry Commission are “relevant bodies”. A control order would specify that particular operations are to be undertaken by named individuals or organisations to control that species by particular dates. The relevant body must give any owner or occupier it has identified at least 42 days in which to enter into a voluntary agreement, a “species control agreement”, before it can make a compulsory species control order.

It is proposed in the Bill that a number of provisions are inserted into the 1981 Act regarding the content, notice requirements, appeal mechanisms and timescales, offences, enforcement of and powers of entry related to control orders (inserted sections 14D - 14O).

Section 20 of the Bill would amend the 1981 Act so that a wildlife inspector appointed by the Scottish Ministers under section 19ZC of the 1981 Act is authorised to take enforcement action in respect of the keeping, notification and species control order offences created by the Bill. Wildlife inspectors are also provided with other powers (such as entering premises and taking blood samples) consistent with new provisions under the Bill.

PART 2 - SPECIES LICENSING

Certain species of animals, birds and plants are protected by law, making it an offence for them to be taken, killed or disturbed. It is recognised however that under certain circumstances prohibited actions are appropriate and necessary, for example to prevent serious damage to livestock or crops, or to stop the spread of disease. For this purpose an appropriate authority may grant a licence to allow otherwise prohibited activity.

The main pieces of legislation concerned with protecting species are:

- The Wildlife and Countryside Act 1981 (c.69) (as amended) – gives protection to all wild birds (not including poultry and game) and certain mammals, insects, fish and plants.
- The Conservation (Natural Habitats &c.) Regulations 1994 (as amended) – animals and plants listed on Schedules 2 and 4 of the Regulations respectively are protected as European Protected Species (EPS). Animals listed on Schedule 3 of the Regulations are protected against certain methods of capture or killing.
- The Protection of Badgers Act 1992 (c.51) (as amended) - The 1992 Act protects badgers and their setts. It has been amended by the Nature Conservation (Scotland) Act 2004.
- The Marine (Scotland) Act 2010 (asp5) (Part 6 replaces The Conservation of Seals Act 1970) – makes it an offence to intentionally or recklessly take, kill or injure a live seal.

Administration of licences is currently shared between the Scottish Government and Scottish Natural Heritage, the appropriate authority being dependent on the purpose for which the licence is sought. In general SNH issues licences for scientific, research or educational purposes, and the Scottish Government issues licences for the purposes of land management or ensuring wider public safety. Marine Scotland is the licensing authority for seals.

The Scottish Government also issue general licences for commonplace control activities relating to birds and their eggs, to avoid the need for individual licences (for example, to license the management of species previously classed as 'pest' species such as crows or pigeons).

PROPOSALS IN THE CONSULTATION

The Scottish Government (2009a) consulted on legislative reform to address issues related to the complexity of the licensing system. The need for individual licences for many different species, some with different levels of protection, was thought to cause confusion among applicants about the circumstances in which a license can be obtained, and who the appropriate licensing authority for that licence is. The Scottish Government state their ambition for species licensing to be that it should:

- be simple from an applicant's viewpoint
- ensure consistent, coherent and evidence-based decision making
- establish clear roles and responsibilities
- concentrate the delivery with the most appropriate organisation.

The consultation suggested three possible options for licensing reform:

- *the status quo* – continuing with the current licensing arrangements but improving efficiency and effectiveness of the process
- *SNH to be the main licensing authority* – SNH currently administers the substantial majority of existing licences
- *Devolution of certain licences to local authorities* – applying only to those licences which relate to planning applications.

The analysis of responses to the consultation on the Bill states that (Scottish Government (2010a):

(...) the majority were in agreement with the preferred authority being Scottish Natural Heritage although a large proportion preferred central government or the status quo. An overwhelming majority were against local authorities dealing with the issue of licences.

The proposals in the consultation document also addressed issues relating to 1) the kinds of activities which can be licensed, and 2) the current duplication of protection for certain species under the 1981 Act and the 1994 Regulations.

- 1) The Conservation (Natural Habitats &c.) Regulations 1994 (as amended) which deals with European Protected Species (EPS), listed on Schedules 2 and 4, enables development activities to be undertaken. This is for circumstances where it can be shown that it is an imperative reason of overriding public interest and providing there is no effect on the favourable conservation status of the species. Under the 1981 Act there is no listed purpose under which development can be licensed. The Government proposes that the 1981 Act should be modified to allow for licences to be granted for works of substantial public benefit including development activities
- 2) The Conservation (Natural Habitats &c.) Amendment (Scotland) Regulations 2007 (No.1) removed EPS from Schedule 5 of the 1981 Act. However some EPS still remain on Schedule 6 (animals which may not be taken or killed by certain methods). There is therefore some duplication of legal protection for EPS, which the Government proposes to address by removing these species⁷ from Schedule 6.

There was majority support for both these proposals in the Scottish Government consultation.

⁷ Horseshoe bats, typical bats, wildcat, bottle-nosed dolphin, common dolphin, common otter and harbour (or common) porpoise

PROPOSALS IN THE BILL

Sections 18-19 of the Bill relate to species licensing. These sections would amend the Wildlife and Countryside Act 1981, and schedule 6 of that Act.

Section 18 of the Bill would amend section 16 of the 1981 Act, which allows the licensing of activities otherwise prohibited under Part 1. Inserting an additional category eligible for a licence “for any other social, economic or environmental purpose” seems to broaden the range of activities for which a licence can be given. The bill also inserts a section stating that a licence must not be granted unless the undertaking will contribute to the achievement of a significant social, economic or environmental benefit (inserted section 16 (3A)).

Section 18 (3) would insert a section in the 1981 Act on the delegation of the power to grant licences. This would enable Scottish Ministers to delegate licensing functions to SNH by direction or to local authorities by order. It also sets consultation requirements and makes other technical provisions in relation to such delegation.

Section 19 would remove ten species from schedule 6 of the 1981 Act. This would remove duplication of protection as these species receive legal protection under the Conservation (Natural Habitats &c.) Regulations 1994 (as amended).

PART 3 – DEER

There are four species of wild deer established in Scotland: roe deer (*Capreolus capreolus*), red deer (*Cervus elaphus*), sika (*Cervus nipon*) and fallow deer (*Dama dama*). A fifth species, muntjac (*Muntjacus reevesi*), has been reported but has not been confirmed as being resident in Scotland. Roe deer and red deer are native species; sika and fallow deer have both become established following introduction.

Red deer are the largest native land mammal in the UK and are found predominantly in the open hill range characteristic of much of upland Scotland, also using woodlands and plantations, particularly for shelter. Although red deer may be the most recognisable species to many, roe deer are in fact the most widely distributed species across Scotland. Roe deer are mainly woodland dwelling and are found throughout mainland Scotland, including around urban centres.

Sika and fallow deer have become established as a result of deliberate releases and escapes from deer parks. Fallow deer were introduced from the Mediterranean to England, possibly during the 11th or 12th centuries. They occur in Scotland mostly around areas in which they were originally kept in captivity. Sika deer were introduced from Japan into UK deer parks in the 19th century and the earliest records of their escape from captivity date from the 1920s. They are more widespread than fallow, with populations spreading in the south, west and north of Scotland. Sika deer are closely related to red deer, and hybrids do occur.⁸

⁸ In order to conserve some red deer populations as free from sika genes as possible, islands off the west coast of Scotland have been designated as red deer refugia under the Wildlife and Countryside Act 1981.

Figure 2 – Deer species in Scotland

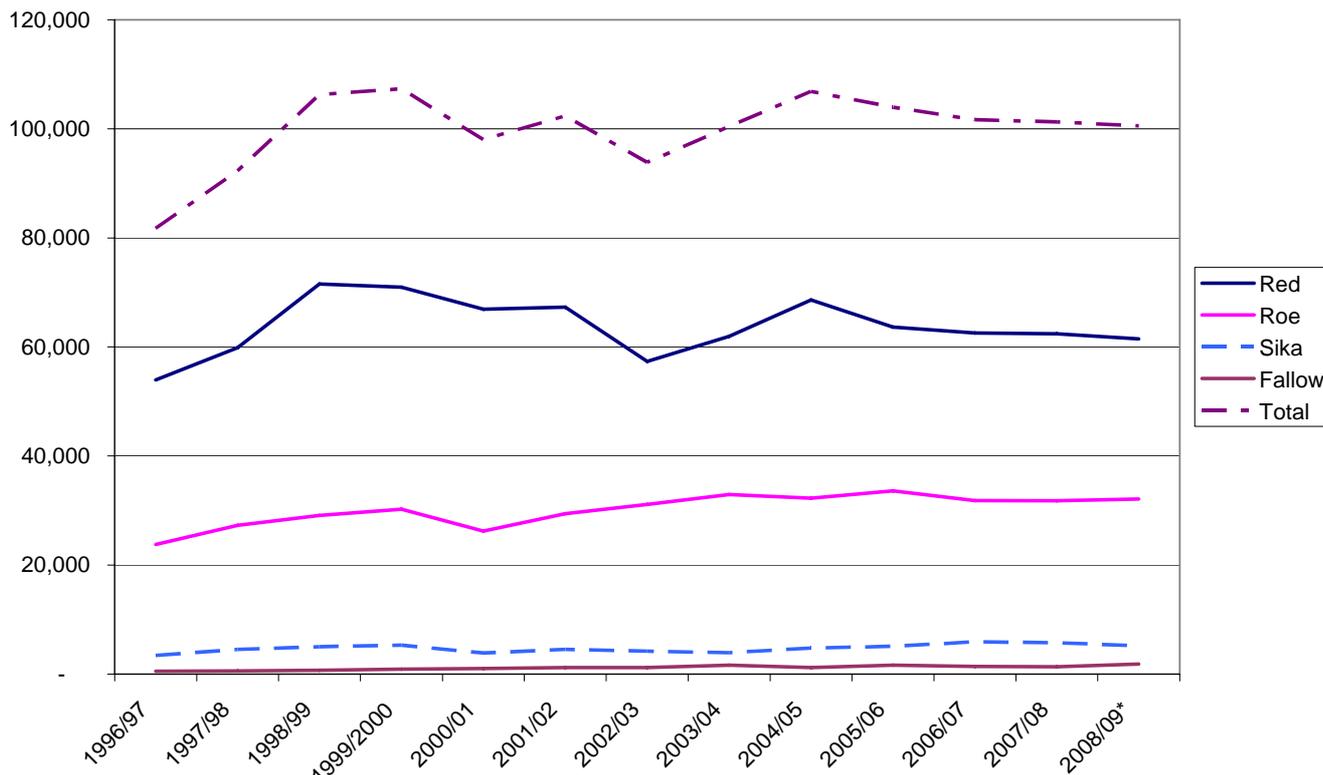


Clockwise from top left (iStockphoto image credits in brackets): Red deer stag (Martin McCarthy), roe buck and doe (Balazs Poloskei), fallow buck (Benjamin Jessop), sika stag (Danny Hampton)

The total population numbers of the four deer species are uncertain. One estimate of the total number of deer in Scotland is 750,000 ([ADMGa](#)). Analysis of deer count has estimated that the open hill population of red deer increased from 197,600 (+/- 35,000) in 1967 to 350,900 (+/- 33,300) in 2000 (Clutton Brock et.al 2004). Deer in woodland are extremely difficult to count, and numbers are not known with any precision. Between 1972 and 2002 roe deer, sika deer and fallow deer increased their range in Scotland partly in association with the expansion of forestry and woodland planting. This suggests populations may have increased, but that is not certain, as the expanded populations may live at lower densities. The range of red deer on the open hill has also increased, as deer have expanded into areas from which hill sheep have been removed. At present this is not thought to have resulted in an increase in numbers, but the Deer Commission has stated that this will be a concern for the future ([Scottish Parliament Rural Affairs and Environment Committee 2009a](#)).

The figure below shows the numbers of deer of each species culled and the total number of deer culled in Scotland since 1996-97, based on cull returns made by landowners to the DCS. The DCS says that while this data has its limitations, as using cull returns under-records the actual cull, particularly in the case of roe deer in the South of Scotland, it does provide a year on year indication of culling trends. A more detailed breakdown of culling data for the last three years is shown in the annex to this briefing.

Figure 3 - Number of deer culled in Scotland since 1996-97



Source: [DCS](#)

Figure 2 above shows that the total number of deer culled in Scotland has fluctuated around 100,000 animals over the last decade. The number of red deer culled has ranged between 55,000 and 70,000; the number of roe deer culled has averaged around 30,000, and around five thousand sika deer and between one and two thousand fallow deer culled.

A study carried out in 2006 estimated that deer management was worth £105 million per year to the Scottish economy, and supported over 2,500 FTE jobs in Scotland ([PACEC 2006b](#)).

CURRENT LEGISLATION

As wild animals, deer belong to no-one until they are killed or captured⁹. The right to shoot deer generally goes with ownership of land.

The principal statute protecting and regulating the management of wild deer in Scotland is the Deer (Scotland) Act 1996 (c.44). The Act consolidated and replaced the Deer (Scotland) Act 1959 (c.40).

The Deer Commission and SNH

The Red Deer Commission was established by the Deer (Scotland) Act 1959. It had a remit to further the conservation and control of red deer. The Deer Commission for Scotland was constituted by the Deer (Scotland) Act 1996, as the successor to the Red Deer Commission. The Commission's functions, powers and duties are set out in Part 1 of the Act. It is charged

⁹ In legal parlance they are described as *Res nullius*.

with furthering the conservation, control and sustainable management of the four species of wild deer in Scotland mentioned above, and keeping under review all matters relating to wild deer.

The Deer Commission's [website](#) explains what its work involves:

“As well as exercising a range of regulatory functions (e.g. Authorisations¹⁰, Statutory Returns¹¹), it publishes Best Practice guidelines, consults and advises widely on Deer Management issues including Annual Cull Targets, promotes and actively participates in the operation of Deer Management Groups, undertakes and commissions research projects, conducts deer counts, disseminates best practice, assists in training, works with other agencies on wider policy issues, and advises Scottish Ministers on all deer matters in Scotland. In all its activities the Commission seeks a co-operative and consultative approach.”

The Public Service Reform (Scotland) Act 2010 provides for the functions of the Deer Commission to be transferred to Scottish Natural Heritage. The Act has not yet been brought into force. The Rural Affairs and Environment Committee (2009b) [reported](#) on the proposals in the Public Services Reform (Scotland) Bill on the 12 October 2009.

Conservation, Control and Sustainable Management of Deer

Part 2 of the 1996 Act requires Scottish Ministers to set a close season for female deer, and provides an enabling power for them to set close seasons for male deer. The close seasons in force in Scotland are shown in the table below.

It is an offence to kill deer during the close season, without the permission of the Deer Commission, unless this is done by a landowner¹² to protect crops, pasture or enclosed woodland. Further background on deer close seasons can be found in a [DCS consultation](#) on close seasons from 2005 (DCS 2005).

Table 1 – Close seasons for deer in Scotland

Species	Male	Female
Red deer, Sika deer and Red/Sika hybrids	October 21 st – June 30 th	Feb 16 th – October 20 th
Fallow deer	May 1 st – July 31 st	Feb 16 th – October 20 th
Roe deer	October 21 st – March 31 st	April 1 st – October 20 th

Note: All dates are inclusive. Close seasons for Sika, Sika/red hybrid, Fallow and Roe are set by the Deer (Close Seasons) (Scotland) Order 1984. The close seasons for Red deer are set by para. 2, Schedule 6 of the Deer (Scotland) Act 1996.

Since they have no natural predators in Scotland, the only check on deer populations is killing by man. If deer culls are insufficient this can create problems:

¹⁰ Authorisations are issued by DCS under the Deer (Scotland) Act 1996. They allow individuals to cull deer in circumstances when they would not normally have the legal right to shoot them, for example to prevent deer damaging natural habitats.

¹¹ Statutory returns are records of deer required to be kept by venison dealers and cull returns made by owner-occupiers

¹² or their employee, an occupier of land, any other person normally resident on the land, or a person approved by the Deer Commission

- For sensitive habitats, for example where winter browsing by deer prevents forest regeneration
- For farmers and foresters, where deer enter onto agricultural land and eat crops and trees
- Of public safety, where deer cross public roads, creating an accident risk
- For deer welfare, where the numbers of deer exceed the capacity of the environment to support them, resulting in starvation and deaths in sustained periods of hard weather.

In order to avoid these problems, the 1996 Act contains a procedure whereby the Deer Commission can enter into an agreement with landowners to reduce deer numbers. The Commission will first seek a voluntary control agreement. If an agreement cannot be secured, or a voluntary agreement is not being implemented, the Act empowers the Commission to make a “control scheme” which can require landowners to reduce deer numbers. If a landowner does not comply with the scheme, the Deer Commission has powers to carry out a cull, the costs for which the landowner is liable. Control Schemes require to be confirmed by Scottish Ministers. The Act also gives the Commission emergency powers to require deer to be killed, or to carry out a cull, where deer: are causing serious damage to woodland, crops or livestock; constitute a danger to public safety; or are causing serious damage to the natural heritage.

The Deer Commission has agreed a joint working approach with the Forestry Commission, SNH and the Scottish Government for monitoring deer impacts on the natural heritage at designated sites and other sites where high deer numbers have the potential to create problems. Currently, there are five sites subject to Control Agreements, and an additional 50 sites where deer impacts are being [monitored](#) (Deer Commission 2009a).

Deer management groups

Wild deer, particularly red deer on the open hill, range widely and deer which range across a large area of hills in summer may congregate together in winter shelter. This means that deer which are present on one property during the stalking season are present on another during the winter. To avoid conflicts, there is a need for collective management of deer populations. In Scotland, Deer Management Groups have been formed to provide fora for this purpose. There are now around 55 such groups, mostly covering the red deer range in the Highlands and Islands, but groups are now becoming established in areas where there are large commercial forests, and in lowland areas for the management of roe, sika and fallow deer (Scottish Government 2010c). Deer Management Group activities include conducting deer counts, and agreeing on cull levels within the group area. Some groups have developed deer management plans. The groups are voluntary and are made up of representatives of the landholdings in the group area ([ADMGb](#)).

Protection of deer, enforcement and venison dealing

Part 3 of the 1996 Act contains a number of provisions to protect deer from poaching and to protect their welfare. These provide that it is an offence to kill deer without legal right or permission. It is also an offence to kill deer at night, or to use vehicles for driving deer without the permission of the Deer Commission. It is an offence to kill deer otherwise than by shooting. The Act provides a power for Scottish Ministers to specify the types of firearms that can be used for shooting different types of deer.¹³ This part of the Act also contains an exception which allows the killing of deer during the closed season to protect crops, pasture and enclosed

¹³ The current requirements are set out in the Deer (Firearms etc.) (Scotland) Order 1985 which was made under the 1959 Act.

woodland. The table below shows the numbers of authorisations of different types granted by the Deer Commission under the Act in the last two years.

Table 2 - Number of authorisations of different types granted by the Deer Commission

Type of authorisation	2007-08	2008-09
Night shooting	179	167
Shooting deer during the close season	61	71
Emergency measures to prevent damage by deer	2	1

Source: Adapted from Deer Commission (2009a)

Part 4 of the Act provides enforcement powers for the police and the courts. It also provides for the penalties for offences committed under the Act, which can include forfeiture of deer and cancellation of firearm and shotgun certificates, in addition to fines and imprisonment. Part 4 of the Act also provides powers for local authorities to issue licences to sell venison, and requires venison dealers to report returns on their activities to the Deer Commission. The Commission can also request landowners to make a return on the numbers of deer killed on their land.

DEVELOPMENT OF PROPOSALS IN THE BILL

Deer Commission review

The Scottish Government's consultation on the merger of the DCS with SNH revealed a consensus that the Deer (Scotland) Act 1996 should be reformed. The then Minister for the Environment, Michael Russell MSP, asked the Deer Commission to review the deer legislation in June 2008. The DCS [responded](#) to this request in January 2009. The DCS (2009b) identified a number of weaknesses in existing legislation:

“there is a lack of incentive for managers to collaborate; there is no mechanism to resolve serious conflicts between private interests, which arise frequently; the current system of Close Seasons does not adequately protect deer welfare; the exercise of owner occupier rights to shoot deer out of season without authorisation has led to welfare concerns; and there is a lack of credible and appropriate back-up powers to protect the public interest.”

The DCS proposed the following reforms to deer legislation:

Deer managers should be subject to a duty to manage deer sustainably, supported by a Code of Practice

1. Where the voluntary system is failing to protect the public interest, public agencies need appropriate and credible backstop powers – the Deer Commission's powers to enter into control agreements and control schemes under sections 7 and 8 of the 1996 Act should be improved
2. Only those who have demonstrated the necessary skills and knowledge should be allowed to shoot deer. Persons shooting deer who had not demonstrated such skills would require to be supervised by someone who had

3. Current owner-occupier rights, (e.g. the right to shoot deer in the close season on agricultural land if they are damaging crops) should be replaced by a requirement to obtain an authorisation to take deer in the close season.

The DCS suggested that once the above measures were in place, close seasons and most of the authorisations for out of season shooting could be deregulated. The DCS advised that a shorter close season should be retained for female deer at the time when their young are most dependent.¹⁴

Proposals in the consultation

Proposals for reforming deer legislation were included in the Scottish Government's (2009a) consultation on the Bill. The Government's proposals built on the advice of DCS:

- The Government proposed to create a statutory duty to manage deer sustainably, backed up by a statutory Code of Practice
- Local deer management would continue as present through Deer Management Groups. Where the voluntary approach fails, DCS would have a power to compel landowners to develop and implement a deer management plan, and powers to enforce and implement the plan and recover costs
- DCS' existing power to appoint an advisory panel would be extended to allow DCS to place a duty on an advisory panel to prepare and implement a management plan within a specified area. The consultation envisaged that this power could be used where Deer Management Groups do not exist, such as in and around towns
- Existing emergency powers of intervention through control agreements and control schemes would be extended from taking action in situations where deer are causing serious damage to woodland, agriculture and the natural heritage or a danger to public safety, to include taking action to protect other public interests such as deer welfare or rural economic development. The consultation explained that control schemes have never been used, and are generally viewed as being overly complex, open to challenge from owners and occupiers, and therefore difficult to apply
- The Government proposed that all those who shoot deer should be required to demonstrate practical skills and knowledge in public safety, deer welfare and food safety, backed by a Code of Practice. It would be a new offence for anyone to take or kill deer without being on the register. There would be exemptions for people shooting deer under supervision of a person on the register, and for those holding appropriate foreign qualifications.

Once the above measures were in place, the Government said that there could be changes to close seasons, although the current primary legislation, which requires Ministers to set a female close season, and allows them to set a male close season, would not be changed. The consultation suggested changes could be made through subordinate legislation to:

- Reduce the female close season to the period of greatest risk to dependent juveniles
- Make the male close season discretionary at local level, with an assumption that over time it would be removed, unless there were compelling reasons for it to be retained.

¹⁴ The welfare issue is that there is a risk of orphaning young deer which are unable to fend for themselves

The consultation on the Bill proposed that the right for owner-occupiers to shoot deer that are causing serious damage to crops, improved agricultural land or enclosed woodland, out of season should be replaced with a requirement for an authorisation. The right to shoot deer at night would be linked to a demonstration of skills and knowledge of night shooting, and authorisations would be given to individuals rather than areas, as is the case at present.

The consultation proposed that the existing offence of driving deer with a vehicle for the purpose of culling would be altered to an offence of driving deer in a way that is reckless as to the consequences for their welfare. This would remove the need to seek authorisation from DCS for driving deer. Finally, to improve the collection of information about deer management the consultation proposed that DCS' powers to require owners and occupiers of land to submit annual cull returns would be amended to require all those authorised to shoot deer to submit an annual return.

PROPOSALS IN THE BILL

The Deer (Scotland) Act 1996 will remain the principal statute, and the Bill would make a number of amendments to it. The proposals included in the Bill have changed following the results of the consultation.

The Bill does not include a duty for deer managers to manage deer sustainably but does provide for a statutory Code of Practice for deer management. SNH¹⁵ would have regard to the Code of Practice when considering whether to exercise its powers under the 1996 Act to secure sustainable deer management. Section 23 of the Bill would insert new section 5A into the 1996 Act, which would require SNH to draw up the Code. The Code would be subject to Ministerial approval, and would require to be laid before the Parliament, although unlike some other codes e.g. the Scottish Outdoor Access Code, or animal welfare codes¹⁶, the Bill would not require the code to be approved by the Parliament.

The Bill would also give SNH the function of furthering urban deer management. Owing to their interests in urban land, the Bill would also place a duty on public authorities to have regard to the advice of SNH on deer management. Section 22 of the Bill would make these changes by amending SNH's functions in the 1996 Act.

The Bill would make a number of changes to the powers of SNH to intervene to ensure effective deer management through control agreements (section 7 of 1996 Act) and control schemes (section 8 of the 1996 Act). These changes would be made by section 24 of the Bill. In particular SNH would have regard to the Code of Practice when considering whether to seek a control agreement. The reasons for SNH seeking a control agreement would be amended to include the deer damaging their own welfare and on "public interests of a social, economic or environmental nature" as well as the impact of deer on forestry, farming, natural heritage or public safety. The 1996 Acts' references to "serious damage" by deer as a reason for SNH intervention would be replaced by references to "damage" by deer. Control agreements and schemes would include time limits for actions to be taken by landowners.

The consultation revealed strong opposition to the proposal for a mandatory competence requirement for shooting deer unsupervised. Several representative organisations in the deer and game sectors offered to work with the Government to improve voluntary training provision.

¹⁵ SNH and DCS are due to merge during 2010. SNH will inherit DCS' functions by virtue of section 1 of the Public Services Reform (Scotland) Act 2010

¹⁶ SNH is required to draw up the Scottish Outdoor Access Code under section 10 of the Land Reform (Scotland) Act 2003. Scottish Ministers may make animal welfare codes under section 37 of the Animal Health and Welfare (Scotland) Act 2006.

The Government has decided to give the industry an opportunity to self-regulate, and work with them to develop a voluntary training scheme. In the event that the voluntary approach does not work, the Bill includes powers in section 26 that would insert a new section 17A into the 1996 Act to allow Ministers to introduce a mandatory competence requirement through subordinate legislation. This would require stalkers to demonstrate skills in and knowledge of stalking, and to be listed on a register maintained by SNH, of fit and competent persons. A person who was not on the register would be allowed to shoot deer under the supervision of a registered person. It is common for persons who pay to stalk deer to be accompanied by a professional stalker, so this could continue if the stalker had met the competence requirement. A system of recognition of foreign hunting qualifications would also be developed. If the powers in section 17A were not used by 1 April 2014, new section 17B of the 1996 Act would require SNH to conduct a review of competence in deer management. Section 17B contains criteria for the review, and a requirement for SNH to consult.

The consultation on the Bill proposed that the right for owner-occupiers to shoot deer out of season that are causing serious damage to crops, improved agricultural land or enclosed woodland should be removed, and subject to a requirement for authorisation. Subsection 25 (3) of the Bill would amend section 26 of the 1996 Act to remove the right to shoot deer damaging crops etc. out of season. Section 26 would also amend section 5 of the 1996 Act, to allow authorisations for shooting deer in the close season to be general or specific. The Government's policy is that SNH would issue a general authorisation to allow owner-occupiers to shoot deer damaging crops etc. out of season, and that the authorisation would be removed from individuals who breached the conditions of the licence. The conditions of the licence could restrict authorisation e.g. for the shooting of female deer at times when their young are most dependent. The Government has decided not to progress the proposed changes to authorisations for night shooting of deer, although if a competence requirement to shoot deer is introduced, Ministers may provide that people registered as competent will automatically be considered competent for the purpose of night shooting authorisations.

The majority of respondents to the consultation disagreed with the Government's proposals to shorten the close season for female deer, and allow the male close season to be set by DMGs. The Government has decided not to progress this proposal, and the existing requirement for Ministers to set a close season for female deer, and the power for them to set a close season for male deer, will remain. The existing close seasons are shown in the table on p 23.

PART 4 - PROTECTION OF BADGERS

The badger (*Meles meles*) is a member of the Mustelidae family of carnivores. Other members of this family which are present in Britain are the otter, polecat, mink, ferret, stoat, weasel and pine marten. Badgers have a widespread distribution over most of mainland Scotland ([SNH, undated](#)). In England and Wales there is concern about badger populations due to the link between badgers and the spread of bovine TB. However, Scotland became officially TB free on 8 September 2009 (Commission Decision 2009/761/EC). A range of offences can be committed against badgers, such as badger killing, baiting and destruction of their setts.

CURRENT LEGISLATION

Badgers and their setts are protected by the Protection of Badgers Act 1992 (c.51) (as amended by the Nature Conservation (Scotland) Act 2004 (asp 6)).

- Under section 1 it is an offence to wilfully kill, injure or take a badger; or to possess any dead badger or any part of, or anything derived from, a dead badger

- Under section 2 it is an offence to cruelly ill-treat a badger; use badger tongs in the course of killing, taking or attempting to kill a badger; or to dig for a badger
- Under section 3 it is an offence to damage a badger sett or any part of it; destroy a badger sett; obstruct access to, or any entrance of, a badger sett; cause a dog to enter a badger sett; or disturb a badger when it is occupying a badger sett. Under section 3(2) a person is guilty of an offence if he knowingly causes or permits to be done an act which is made unlawful in subsection 1 (a provision not found in the other sections). A badger sett is any structure or place which displays signs indicating current use by a badger.
- Under section 4 it is an offence to offence to sell a live badger or offer one for sale or be in possession of a live badger
- Under section 5 it is an offence to mark, tag or ring a badger.

Licences are dealt with under section 10. As with other legislation, it is possible to carry out actions that would otherwise be illegal, under a licence. The licensing authority is either Scottish Natural Heritage (e.g. for development purposes) or Scottish Government (e.g. preventing the spread of disease).

Section 12 of the 1992 Act relates to penalties. The maximum penalty for killing, injuring, taking, ill-treating or marking a badger is imprisonment for up to six months or a fine up to level 5 on the standard scale, or both for a summary conviction. Prosecutions for some other offences, including cruelty, can be tried summarily or on indictment. Where more serious offences are heard on indictment the maximum penalty can be imprisonment for a term not exceeding three years or an unlimited fine, or both.¹⁷

PROPOSALS IN THE CONSULTATION

The Bill consultation document proposed revisions to the 1992 Act so that:

- an offence would be committed where a person undertakes the relevant activity [kill, injure, take etc] directly or knowingly causes or permits the act to be done
- offences relating to the killing of badgers would be included within the category of offences which may be tried summarily or on indictment (Scottish Government, 2009a).

The Scottish Government analysis of consultation responses found that 80% of respondents supported the proposal to create an offence of knowingly causing or permitting such acts to be done. There was some concern over difficulties in establishing proof. Around three quarters of respondents supported, or supported with caveats, the proposal to amend the 1992 Act relating to the category of offences for killing badgers. Concerns were expressed about restriction of legitimate land management practices and possible control of the “exponential rate of expansion of the UK badger populations” (Scottish Government 2010a, p 88).

¹⁷ Summary prosecutions are heard by a justice of the peace, stipendiary magistrate or sheriff sitting alone, prosecutions on indictment (or solemn proceedings) are for more serious offences and are heard by a sheriff or judge and a jury.

PROPOSALS IN THE BILL

Section 27 of the Bill would amend the Protection of Badgers Act 1992 by inserting subsections into the 1992 Act to add to the existing offences of knowingly:

- taking, injuring or killing a badger (section 1 of 1992 Act)
- cruelly ill-treating a badger (section 2 of 1992 Act)
- selling and being in possession of live badgers (section 4 of the 1992 Act) and
- marking and ringing a badger (section 5 of the 1992 Act).

to make it is also an offence if a person “knowingly causes or permits” any of the above to happen.

Section 27 (6) inserts changes to section 10 of the 1992 Act which relates to licensing of acts which would otherwise be an offence. This allows Scottish Ministers to delegate functions to Scottish Natural Heritage by written direction, or to delegate to a local authority by order following consultation with the local authority, Scottish Natural Heritage and anyone else affected by the making of the order. This will make licensing of otherwise prohibited activities related to badgers the same as for other species.

Section 27 (9) of the Bill amends section 12 on penalties for offences under the 1992 Act. It is considered an anomaly that the maximum penalty for killing a badger is currently less than for other offences such as digging for a badger. The amendments to the 1992 Act allow for the offences of illegally killing, injuring or taking a badger, possessing all or part of a dead badger, knowingly permitting or causing these offences, and knowingly permitting or causing cruelty to a badger to be prosecuted summarily or on indictment.

PART 4 - MUIRBURN

Muirburn is the act of controlled burning of vegetation on open, treeless, mainly upland areas and involves the burning of vegetation – heather, grass and gorse. Generally, muirburn is carried out by land managers such as gamekeepers, hill farmers, crofters, and estate managers. The purpose is to provide fresh grass and young heather for livestock, game and wildlife, and to remove the fuel load of older vegetation to prevent wildfires. Muirburn can also be used as a tool to manage habitats for conservation and there is interest in exploring its role in pest and disease control (Cook, 2009).

CURRENT LEGISLATION

Hill Farming Act 1946 (c.73)

The Hill Farming Act 1946 is the main piece of legislation regulating the practice of Muirburn (Scottish Government 2008). The Act creates the offences of:

- Burning outwith the statutory burning season (1st October to 15th April. This period may be extended, with the landowners permission, until 30th April at altitudes below 450m and until 15th May above 450m)
- Burning at night, defined as between 1 hour after sunset and 1 hour before sunrise

- Leaving a fire unattended
- Being unable to control a fire or having not made provision for its proper control
- Causing damage to any woodland or to neighbouring property
- Omitting to give the landlord and adjoining proprietors at least 24 hours written notice of the date, place and extent of intended muirburn.

Other legislation may also be relevant in certain circumstances, for example protecting scheduled monuments, protected sites, the nests, eggs or young of breeding birds, public health, and road safety. Muirburn must also comply with the requirement to take fire safety measures in respect of harm caused by fire (Fire (Scotland) Act 2005), health and safety legislation.

Climate Change (Scotland) Act 2009

The Scottish Government included provisions on muirburn in the Climate Change (Scotland) Bill on the basis that:

- Scottish peat holds approximately three thousand million tons of stored carbon. There is a risk that if not correctly controlled, muirburn can cause peat fires, leading to significant combustion of stored carbon. However, muirburn can contribute to protecting soil carbon stores by reducing the risk of wildfire
- Changes in Scotland's climate include increasing temperatures, wetter winters and warmer summers and reduced snow cover. This may reduce the number of burning days
- The earlier onset of spring may mean that birds nest earlier in the year. In the consultation on the Climate Change (Scotland) Bill, RSPB Scotland expressed concern that burning may be undertaken while moorland birds are nesting (RSPB 2008).

Section 58 of the Climate Change (Scotland) Act 2009 (asp 12) inserted new section 23A into the Hill Farming Act 1946 (c.73) to give Scottish Ministers a power to vary the dates of the muirburn season, but only in relation to climate change. The Wildlife and Natural Environment Bill consultation document states that:

“Last year the Scottish Government consulted on the muirburn provision in the Climate Change (Scotland) Bill. Responses to the consultation suggested that the laws regarding muirburn in the Hill Farming Act need to be reviewed to reflect changes in the objectives and practice of prescribed burning since the Act was introduced in 1946. Many of the suggested changes were outwith the scope of the Climate Change (Scotland) Bill and could not be progressed at that time. The Wildlife and Natural Environment Bill now presents the opportunity to address these issues.”

The Muirburn code

The [Muirburn code](#) (Scottish Government 2008) details the Scottish Government's recommended best practice for muirburn and states that:

“The cross compliance requirements of the Single Farm Payment (SFP) require moorland to be maintained in Good Agricultural and Environmental Condition (GAEC), and the Muirburn Code will be used as the standard expected of managers. The Code applies to farmers and all moorland managers and forms part of the compliance requirements for Single Farm Payments.”

PROPOSALS IN THE CONSULTATION

The consultation document sought views on:

- Varying the muirburn season for reasons other than climate change. For example, extending the muirburn season into September to assist land managers in completing muirburn programmes
- Licensing out of season muirburn for specific purposes such as research, habitat restoration or pest control
- Removal of the ability to burn after 30th April above 450m in order to protect ground nesting birds
- Allowing an exception to the prohibition of night burning for the purposes of wildfire suppression
- Removal of legal requirement for neighbour notification to reduce bureaucracy
- Restricting the types of burning permitted through secondary legislation, in order to prevent practices which risk soil exposure and erosion (similar to those prohibited in the Heather and Grass etc. Burning (England) Regulations 2007). These include burning large continuous areas and burning on steep slopes or rocky areas.
- Updating the Muirburn code to increase reference to environmental protection, be more user-friendly, update with recent research findings and reflect changes to muirburn legislation.

In the consultation, licensing of out-of-season burning and giving Scottish Ministers powers to vary the dates of the muirburn season were met with majority stakeholder agreement (greater than 70%) (Scottish Government, 2010a). Concerns expressed included:

- There could be implications for local biodiversity if licenses are issued for burning outwith the season
- powers to vary muirburn dates should be accompanied by stronger safeguards to ensure good practice
- preserving the current number of Muirburn burning days.

Sixty per cent of stakeholders were in agreement with the proposal to remove the ability to burn after 30th April. However, some respondents expressed concern that:

- Restricting the permissible burning dates would inevitably limit opportunities for burning under good conditions
- Burning above 450m in altitude can be severely restricted by the weather, so allowing Muirburn up to 15th May can be important.

The Scottish Government decided not to progress proposals relating to night time burning and restrictions on the types of burning, stating that (Scottish Government 2010b):

“The proposal to permit night time suppression fires will not be taken forward, as an alternative possible approach has been identified which can be explored through the Scottish Wildfire Forum. The proposal to remove the legal neighbour notification requirement received mixed views – therefore rather than removing the notification requirement, the Scottish Government

proposes modifying it so that it is more practical for land managers to operate. The proposal to allow Ministers to restrict types of burning practice which risk soil exposure and erosion will not be taken forward, as further evidence is required in this area. It will be necessary to update the Muirburn Code to reflect the above proposals that will be progressed in legislation – this will present an opportunity to consider a wider review of the Code.”

PROPOSALS IN THE BILL

Section 28 of the Bill addresses muirburn and seeks to amend the Hill Farming Act 1946. Three sections would be inserted into the 1946 Act relating to the muirburn season (inserted section 23), muirburn licences (inserted section 23B) and muirburn notices (inserted 26A).

A new section 23 would establish:

- a “standard muirburn season” (1 October until 15 April) and
- an “extended muirburn season” (16 April until 30 April) (section 23(2) to (4)). This would mean that it was no longer permitted to make muirburn between 1 and 15 May above 450m.

The Bill would amend Scottish Ministers powers in section 23A to modify muirburn seasons by order. Scottish Ministers would be able to modify the seasons for different land, years and purposes if necessary or expedient to do so for climate change reasons, managing the natural environment, or for public safety (inserted section 23A (2a-c)).

Section 28(4) of the Bill would insert section 23B into the 1946 Act to allow Scottish Ministers to grant a licence for muirburn outwith the standard and extended seasons. Such a licence would be for the purpose of managing the natural environment, research or public safety. This power could be delegated to SNH.

Section 28(6) of the Bill amends section 26 of the 1946 Act, on notices as to muirburn. This requires that notices must be given prior to muirburn taking place and specifies the nature of the notice and the means by which the notice must be given (inserted section 26A).

PART 5 – SITES OF SPECIAL SCIENTIFIC INTEREST

The Site of Special Scientific Interest (SSSI) is a statutory designation made by SNH under the Nature Conservation (Scotland) Act 2004 (asp 6). Most SSSIs are in private ownership and SNH works with their owners and managers to ensure appropriate management of the sites natural features and to ensure decision-makers, land managers, their agents and advisors, as well as local authorities and other public bodies, are aware of SSSIs when considering changes in land-use or other activities which might affect them (SNH, undated).

SSSI are those areas of land and water that SNH considers to best represent Scotland’s natural heritage – it’s diversity of plants, animals and habitats, rocks and landforms, or combination of such natural features. SSSIs together form a network of the best examples of species, habitats and rock and landform features throughout Scotland, and support a wider network across Great Britain (SNH, 2004). At 31 March 2009, there were 1,456 SSSIs covering a total area of 1,036,000 hectares or 12.9% of Scotland (SNH, undated).

CURRENT LEGISLATION

Originally notified under the National Parks and Access to the Countryside Act 1949, SSSIs have been renotified under the Wildlife and Countryside Act 1981. Improved provisions for the protection and management of SSSIs were introduced by the Nature Conservation (Scotland) Act 2004.

Scottish Natural Heritage has a duty, under section 3 of the Nature Conservation (Scotland) Act 2004, to notify as SSSI areas of land that it considers to be of national importance for their fauna or flora or their geology or geomorphology.

SSSIs are protected by law. It is an offence for any person to intentionally or recklessly damage the protected natural features of an SSSI. In terms of planning a planning authority must consult SNH, and have regard to its advice, when determining an application for a development which might affect a SSSI.

PROPOSALS IN THE CONSULTATION

In the Scottish Government (2009a) consultation a number of proposals were put forward relating to SSSIs.

- A proposal that SNH, or Scottish Ministers be granted additional powers to issue Restoration Notices to require the restoration of damaged SSSI natural features such that prosecution need only be pursued should there be a failure to comply with such a Notice. This received support from 77% of respondents to the consultation
- A proposal to clarify the wording of section 13(1) of the Nature Conservation (Scotland) Act 2004 so that a public body owner or occupier would have to apply to SNH for consent before allowing any damaging operation to take place on their land, whether this is being carried out by themselves or a third party. Ninety two per cent of respondents agreed to this proposal in the consultation
- A proposal that the list of situations in which SSSI consent is not required from SNH be extended to include operations being carried out in fulfilment of a contract with a government department, agency or NDPB (with the proviso that that organisation consults SNH in compliance with section 15 of the 2004 Act). Sixty three per cent of respondents supported this proposal. Some respondents were concerned that this proposal could lead to a weakening of the system for protecting SSSIs, since authorities are required to “have regard” to SNH’s advice, but not required to take any advice on board
- The proposal to broaden SNH’s powers of entry under section 44 of the Nature Conservation (Scotland) Act 2004 to allow SNH to authorise repeated entry on to land, without a warrant, to investigate offences on SSSIs and Natura 2000 sites and monitor restoration works (being carried out voluntarily or under a Restoration Notice) was controversial. 47% agreed with this and 45% disagreed. The consultation analysis of responses reports that some respondents preferred a more formalised system of consultation, court orders and warrants, whilst others felt that an approach focused on discussions with the landowner and voluntary agreements would be workable and much more acceptable
- A proposal to extend SNH’s powers to de-notify an SSSI (either in whole or part) without provision for representations from interested parties in situations where SNH considers part of an SSSI no longer to be of special interest as the result of an operation permitted by a planning authority or other designated regulatory authority, was not well received in the consultation? Thirty five per cent agreed and 45% disagreed with this proposal. The majority

of people who disagreed argued that all decisions taken on land use issues should be subject to a fully transparent process of stakeholder engagement.

- Fifty six per cent of respondents disagreed with the proposal that SNH be granted powers to merge SSSIs. It was proposed that such a merger would be without the requirement to seek representation from interested parties. This would only be carried out on the basis that “new” merged SSSIs have no greater extent than that of the former sites. Twenty six per cent of respondents to the consultation agreed with this proposal. The majority of those who disagreed felt that SNH should always consult with landowners, land occupiers and other interested parties before making any decision to merge or denotify SSSIs. It was also noted that merging SSSIs has potential to change the list of Operations Requiring Consent on that site with an associated impact on the activities of those that use the land.

PROPOSALS IN THE BILL

Sections 29-32 of the Wildlife and Natural Environment Bill relate to SSSIs. Section 29 inserts section 5A into the Nature Conservation Act 2004, which seeks to grant powers to SNH to merge SSSIs. The revised SSSI must not include any land that was not previously part of an SSSI. This section provides procedures relating to the notification and advertisement of combined SSSIs and the revision of the management statement for the combined site. From the date of notification of the combined SSSI, the component SSSI notifications cease to have effect under subsection 3(c).

Section 30 relates to the possible denotification by SNH of an SSSI where the site has been damaged by permitted operations, so that the site is no longer of special interest. The inserted provision allows for SNH to revoke or modify the designation.

Sections 13 and 14 of the 2004 Act are amended by Section 31 of the Bill, so that existing provision relating to operations carried out in SSSIs, by public bodies themselves is also applied to operations which are *caused or permitted* by public bodies (when such operations occur on land which is owned or occupied by the public body).

Section 32 of the Bill inserts a section on restoration notices into the 2004 Act. These relate to when there has been illegal damage to a SSSI, and restoration is needed. Currently, restoration can take place voluntarily or a restoration order can be served by the courts (which can be uncertain and costly). The purpose of this section of the Bill is to provide a third alternative. A restoration notice is a written notice which would be issued by SNH to the owner of a SSSI or to a public body that had exercised its function in relation to the land (the responsible person), and would require that person to take steps to restore the damaged natural features “so far as is reasonable practicable”, to what it would have been if no damage had occurred. The inserted section sets out details of the notices, such as what they should contain, when they should be withdrawn, the period of the notice and so on.

Inserted section 20A (11) sets out that failure to comply with a notice can lead to a fine not exceeding £40,000 on summary conviction, or on conviction on indictment, to a fine. If the notice is not complied with, SNH may carry out the operations and recover reasonable expenses.

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ANNEX

Table 3 – Deer culls in Scotland seasons ending 2007 - 2009

Species	Year	In season			Out of season			Total
		Female	Male	Total	Female	Male	Total	
Red	2007	30,038	23,279	53,317	2,548	6,698	9,246	62,563
	2008	24,444	19,362	43,806	1,599	4,263	5,862	49,668
	2009	29,859	23,664	53,523	1,971	5,964	7,935	61,458
Roe	2007	14,903	12,743	27,646	1,305	2,857	4,162	31,808
	2008	12,459	9,969	22,428	873	2,350	3,223	25,651
	2009	15,289	12,915	28,204	1,152	2,733	3,885	32,089
Sika	2007	1,971	1,656	3,627	761	1,535	2,296	5,923
	2008	1,668	1,250	2,918	375	757	1,132	4,050
	2009	1,688	1,555	3,243	639	1,285	1,924	5,167
Fallow	2007	517	696	1,213	110	75	185	1,398
	2008	965	961	1,926	143	78	221	2,147
	2009	741	864	1,605	121	92	213	1,818
All species	2007	47,429	38,374	85,803	4,724	11,165	15,889	101,692
	2008	39,536	31,542	71,078	2,990	7,448	10,438	81,516
	2009	47,577	38,998	86,575	3,883	10,074	13,957	100,532

Source: DCS [Cull data](#)

Table 4 – Close seasons for game and quarry species in Scotland

Species	Close season	Quarry species	Close season
Ptarmigan	11 Dec - 11 Aug	Snipe	1 Feb – 11 Aug
Red grouse	11 Dec - 11 Aug	Wildfowl (below High Water Mark)	21 Feb – 31 Aug
Black grouse	11 Dec – 19 Aug	Other quarry species (and wildfowl above HWM)	1 Feb– 31 Aug
Partridge	2 Feb – 31 Aug		
Pheasant	2 Feb – 30 Sept		

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