

## ***‘Changes to legislation governing deer management in England and Wales’***

### **Response of the Deer Initiative**

Respondent details:

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#### **Background**

The Deer Initiative (DI) is a wide partnership of statutory, non-statutory, voluntary and private interests. Whilst originally set up by the Forestry Commission and still, in the main, funded by the Forestry Commission and Natural England, it has a core staff whose activities are both to co-ordinate the relevant activities of the partners and to deliver some functions directly.

The aim of the DI is “*to ensure the delivery of a sustainable, well managed wild deer population in England and Wales*”. The staff and finances of the DI are managed through the DI Ltd, a charitable company limited by guarantee, dedicated to supporting the DI.

Our remit is restricted to the management of wild deer and this response focuses on the issues that affect this role. Some of our Partners have wider interests and will undoubtedly respond in this wider context.

#### **Introduction**

Partners had an opportunity for a briefing from Defra and discussion prior to the closing date for the consultation. The Partnership is generally content with the thrust of the Part I proposals, though some organizations may have slight differences in their level of support for individual proposals.

#### **Proposed Changes**

- A. *Allow .22 centre-fire rifles to be used for shooting smaller species of deer* – **AGREED but:**

There still appears to be some division of opinion within the deer shooting community on this issue. Whilst we support this proposal as outlined in our previous response, we do not accept some of the reasoning put forward within the consultation document, especially in regards to safety issues and the potential penetration or subsequent exit of rifle bullets.

In their responses both the RSPCA and the BDS expressed the view that the central issue was whether the use of .22 calibre centre-fire rifles was humane for species such as roe. We note that there was little data in the previous consultation responses from

such bodies relating to this point. Unfortunately, the current consultation document provides no further evidence on this aspect. The legal analysis section (4.4) simply refers to “*Anecdotal evidence and experience of deer management in Scotland*” supporting the view that .22 centre-fire rifles are adequate for achieving a humane kill on smaller species of deer. The Scottish experience and evidence can, of course, only relate to roe deer since muntjac and Chinese water deer do not occur in Scotland. However, no clarification is provided as to what this “*anecdotal evidence and experience*” comprises and we are not in a position to offer any further evidence.

We agree that the proposed change, reducing the minimum criteria for rifles and ammunition for some species, may reduce a legal burden on deer managers, gamekeepers and stalkers, and perhaps facilitate control of the smaller species of deer. In our view, any change in the legislation must incorporate the Scottish restrictions on muzzle velocity, energy and bullet weights to ensure the best chance of humane kills. If this is to be adopted it seem sensible to accept the Scottish legislation for the larger species as well.

- B. *Allow any reasonable means of humanely despatching deer that are suffering due to injuries or disease* - **AGREED** for the reasons set out but:

Paragraphs 4.7-4.12: cover *inter alia* an easing of restrictions on the type of firearm that may be used to despatch humanely an injured deer. What this section does not address is whether this may be done despite any restrictive conditions that are at present entered on the Firearm Certificate covering the most readily available firearm. These might limit the firearm’s use to fox shooting or vermin destruction for instance, so a breach of the condition (an offence in law) would occur if the firearm were used for the wholly laudable purpose of the rapid humane despatch of a wounded deer. Whilst a Firearms Certificate variation would be free to the applicant there would be a significant administrative cost imposed on the police firearms licensing system. We are not in a position to quantify the number of individuals who may wish to take advantage of this change.

- C. *Allow dependent deer to be taken or killed if they have been deprived of, or are about to be deprived of, their mother, at any time of year regardless of the close season or the time of day.* – **AGREED** for the reasons set out.
- D. *Enable licensed taking or killing during the close season to prevent deterioration of the natural heritage* – **AGREED but:**

We welcome the confirmation that a licence (unlike a notice) cannot be imposed on an individual:

*‘2.19 It is envisaged that close season or night shooting for these purposes should apply only to persons who have authority to kill or take deer on particular land during the relevant open season and be done only under licence’*”

However we believe that the process involved in licensing should be made clear as early as possible. There is no indication of the safeguards that might be applied to the licensing procedures other than:

*'2.14 The department proposes three pre-conditions that applicants would need to satisfy:*

- all reasonable preventative measures to achieve the relevant purpose have been taken;*
- the applicant would be entitled to access the relevant land for the purpose of taking or killing under a licence granted under this section; and*
- where red, roe or fallow deer are present on the relevant land, taking or killing under licence would not be detrimental to their conservation status'*

and references to:

*'This licensed taking or killing of deer during the close season or at night should remain exceptional and each case would be considered on its merits.'*

We would welcome early clarification of the methodology to be employed prior to the issuing of a license. In particular we would wish to be convinced that expert advice had been sought to ensure that *'all reasonable preventative measures to achieve the relevant purpose have been taken'* prior to the issuing of a license.

Experience in Scotland and with Agricultural Act notices have reinforced our belief that consultation with stakeholders must be at the heart of the licensing procedures and such procedures must be transparent. If (as we understand) licences are to be granted by Natural England (NE) (the body newly formed from amalgamating English Nature, the Rural Development Service and parts of the Countryside Agency) or the Countryside Council for Wales what processes will be involved? Until NE came into existence Defra was the licensing authority for England for many purposes and the current licensing process included consultation with their statutory advisers English Nature. Since NE would be responsible for licensing will they advise themselves – a process that may lack transparency – or will there be provision for seeking expert advice where necessary.

We are aware that CCW in their response to this consultation have said:

*'With regards to drawing up guidance on all reasonable preventative measures, and pre-conditions to issuing licences, CCW would welcome the involvement of the Deer Initiative. The Deer Initiative has considerable experience in the management of deer and can provide specialist advice on available deer control measures, and the effect of culling on the conservation status of the deer.'*

We would welcome further discussions to explore this issue further.

We would also welcome confirmation that Crown Land will be included in the licensing regime.

We also have reservations about the projections for the number of applications for out of season or night shooting licenses. These projections are based on the number of enquiries that are submitted directly to Defra. No account has been taken of the advisory role played by organisations such as the DI and our Partners, which will have resulted in many applicants refraining from applying for authorisation. We believe that the indirect costs that will be incurred by the licensing authorities could be much greater than anticipated.

E. *Enable licensed taking or killing during the close season to preserve public health and safety* - **AGREED but see Para 4 and:**

We would also be grateful for confirmation that there will be an agreed Code of Practice (similar to that in Scotland) that will be used whenever night shooting licenses are agreed.

F. *Enable licensed taking or killing at night to prevent deterioration of the natural heritage* – **AGREED but see Para 4 & 5 and:**

We would be grateful for an assurance that a comprehensive code of practice will be issued for all night shooting authorizations, similar to the one used by the Deer Commission for Scotland (DCS). In particular we would seek clarification on the use of light-intensifying, heat sensitive or other special devices for night shooting (which are prohibited under Article 5 of the Deer (Firearms etc) (Scotland) Order 1985.

In Scotland, authorizations for night shooting in woodland stipulate that a trained dog must be present to enable a humane follow up if a shot deer cannot be located in the dark. We would support the adoption of such a condition for night shooting licenses in England and Wales.

G. *Enable licenses taking or killing at night to preserve public health and safety* – **AGREED but see Para 4 &5.**

H. *Enable licenses taking or killing at night to prevent serious damage to property* – **AGREED but see Para 4, 5, 6 and:**

We believe that the fact that the provisions of S98 of the Agricultural Act 1947 (night shooting notices) are to be retained should be made very clear but would urge that the guidance for the issue of such notices should be reviewed to ensure congruence with the licensing system.

- I. *Shorten the close season for all female deer to help allow better control of population numbers where necessary, without increasing the welfare risks for dependent young. –*  
**AGREED but:**

Proposal I does not have any cost implications. Deer, particularly at high densities, can cause damage to agricultural and horticultural crops, woodland, conservation sites and can pose a safety hazard by causing vehicle collisions. A key to effective management of deer numbers is control of females and it is felt that the current close seasons for female deer are too long to enable adequate population control. Proposal I would allow deer managers two more weeks to control female deer. There are savings to be had in all of the above mentioned sectors, some of which have already been highlighted in the costs and savings section for proposals E, G and H and some of which are difficult to quantify, e.g. for proposals D and F.

However this proposal is probably the most hotly debated of the proposals. We welcome the proposed extension of the season to 14 March. However we do not believe that this proposal goes far enough and would have preferred to an extension until 31 March to allow better management of the female deer population. We believe that this would allow management to take place with little risk of leaving dependant calves/fawns (see below) and have the added benefit of extending the open season further beyond the game shooting season which is a significant factor in lowland England.

We recognize that there are some concerns raised by recent Scottish research that suggests roe deer are calving much earlier than reported in the scientific literature.  
[http://www.dcs.gov.uk/downloads/seasonsResearch\\_summariesWeb.doc](http://www.dcs.gov.uk/downloads/seasonsResearch_summariesWeb.doc)

We hesitantly agree with the RSPCA that the data suggests that moving the start of the season to the 15<sup>th</sup> March could have some adverse welfare effects although, if so, they may only relate to a very small number of roe deer. There may be some questions about the research method used to estimate calving dates and it would have been useful if this evidence base had been evaluated prior to the current consultation. However, if this is coupled with the fact that there is a spread of calving dates reflecting milder climatic conditions and the possibility of future climate change further affecting breeding seasons.

However on balance we would urge Defra to consider amending this now (to extend the season to 31 March) or at least make a commitment to reviewing the situation in 2-3 years. Whichever option is taken we would recommend that further research on calving dates is commissioned as a matter of urgency to ensure any further changes are based on solid science.

With regard to how the proposed change may be effected we note that paragraph 3.28 states

*“It is envisaged that this would be achieved by the RRO replacing the current close season schedule with a new schedule that designates all doe and hind seasons as commencing on 15 March (instead of 1 March as at present) and terminating on the current date of 31 October.*

*The Schedule to the RRO will be designated a ‘subordinate provision’, which enables it to be amended in future by a ‘subordinate provisions order’ rather than by primary legislation or a full regulatory reform order. It can be amended by the Secretary of State, or, in Wales, by the NAW.”*

The proposal that any future changes will be by a ‘subordinate provisions order’, and may therefore not be subject to appropriate consultations and scrutiny, causes some concern among our Partners. In that this change may give a future Secretary of State, or the NAW, a free hand to change the close seasons without a suitable process for evaluating the effects or seeking to ensure that necessary protections are maintained in the future.

Paragraph 3.54 states

*“... The government believes that the SoS and/or NAW have adequate expertise to review the operation of the new close seasons and the licensing conditions. This power would enable them to make such amendments that they consider necessary to properly balance deer conservation and welfare concerns with the need to protect property, public health and safety and the natural heritage. The government believes that the designated procedure for making amendments involves a sufficient and proportionate degree of parliamentary scrutiny to the types of amendments that could be made.”*

We believe that there must be an effective consultation and scrutiny process built into any procedure to amend the proposed new Schedule in the future and would therefore welcome clarification regarding the designated procedure. The Partnership believes that the procedure for making any future amendments to the Schedule must involve the SoS and/or NAW consulting organisations likely to be interested in, or affected by, the order.

Whilst we believe that the ultimate responsibility for cull selection lies with the deer manager/stalker, as the document acknowledges, close seasons (where they can be determined) are there to protect the welfare of deer during their calving season. We therefore believe that any future changes to the seasons should relate to some of the fundamental provisions of the legislation affecting the welfare of deer. We would therefore urge that it should be a legal requirement that any future change to close seasons should not be considered or proposed without appropriate consultation prior to the making of any order.

J. *Introduce a close season for Chinese water deer from 15 March to 31 October inclusive – **AGREED** for the reasons set out.*

K. *Ensure the close season applies to hybrids of a species as well as the parent species – **AGREED** for the reasons set out but:*

Whilst we agree that female red/sika hybrids should be given the same protection as other female wild deer the recent Government response to the Review of Non-Native

Species Policy recognizes the need for management of established invasive non-natives in accordance with Convention on Biodiversity (CBD). The option includes eradication, containment or control. Whilst accepting the legislative changes regarding both sika and muntjac we remain convinced that a strategic policy review is required. The DCS sika policy document is a model for this approach.

- L. *Amend the meaning of mechanically propelled vehicle in the Deer Act to permit discharging firearms or projecting missiles from a mechanically propelled vehicle that is stationary.* – **AGREED** for the reasons set out.

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