

**CLOSE SEASONS: A CONSULTATION BY THE DEER COMMISSION
FOR SCOTLAND**

Response by Advocates for Animals

Advocates for Animals (Advocates) believes that the central principle in this debate should be that the culling of deer should be kept to an absolute minimum. Wherever possible, alternatives to culling should be used both to control the size of the deer population and as a means of avoiding damage by deer to woodlands and agricultural production of crops or livestock. Where culling is carried out, it must be performed humanely by persons who have demonstrated that they are fit and competent to cull deer in as humane a manner as possible.

Advocates believes that substantial resources should be committed to the development of alternatives to culling. We believe, for example, that repellents have been trialled in Europe and the USA that use natural and synthetic compounds and odours including predator odours. We urge the Deer Commission of Scotland (DCS) and the Scottish Executive to give maximum support to the development of such repellents which could significantly reduce the amount of culling that takes place to protect property. We also urge that further work be undertaken to investigate the extent to which immuno-contraception could be used to control the deer population.

Advocates' response to the specific questions in the DCS consultation document is as follows.

Q 2.1 As the management of wild deer populations, which involves a significant level of culling, is undertaken to attain a range of objectives that are primarily for human benefit, we have a moral responsibility to ensure that the management is carried out as humanely as possible.

Advocates believes a duty of care should be laid down in legislation rather than simply being left to an unenforceable code. However, a code has an important role to play in explaining the practical implications of the legislation. Such a code should, however, be seen as supplementing legislation, not as a substitute for it.

Q 2.2 The current situation, whereby those who wish to shoot deer only have to demonstrate that they are fit and competent in certain limited circumstances, is unacceptable. In Advocates' view all those who kill deer, both in and out of season, including sporting clients and first time shooters, must be "fit and competent".

Fitness and competence should be demonstrated through an independent, formalised assessment process. Shooters should not be able to self-certify their fitness and competence.

Q 3.1 There are strong moral and welfare reasons for deer of all species and both genders to have a close season. Females must have a close season in order to protect heavily pregnant animals and dependant calves. Male deer need a close season in order to have an undisturbed period to build up fat and energy reserves post-rut.

Q3.2 Advocates is firmly opposed to the close seasons becoming a voluntary matter at the discretion of owners and occupiers. We believe that it is essential that the requirement that there should be close seasons continues to be laid down in legislation.

There has recently been growing concern about the welfare aspects of deer management and it would be a retrograde step for a factor as essential and crucial as the close seasons to be downgraded in importance by being removed from legislation and left to the discretion of owners and occupiers. Such discretion would inevitably be exercised in different ways, leading to inconsistency. Removing the close seasons from legislation would also lead to a reduction in transparency and accountability.

Q 3.3 Close season dates should vary by species in order to respond to the differing welfare and life cycle needs of individual species.

Q 3.4 Where it is practicable to do so in terms of administration and enforcement, seasons should vary to take account of geographical and habitat considerations.

Q 3.5 Close seasons should be set so as to prevent the shooting of deer in the latter stages of pregnancy. We believe that a significant proportion of the public would find the shooting of deer in an advanced stage of pregnancy to be ethically unacceptable from the point of view of both the heavily pregnant female and the potential suffering of the foetus which, in a heavily pregnant animal, will be well developed. We cannot share the confidence of the DCS

consultation document that the foetus is unlikely to experience suffering when the deer is shot.

Q 3.6 It is extremely difficult to determine precisely at what point juveniles are no longer dependent on their mothers. In our view the mother provides a sustaining influence over and above the supply of milk. A juvenile born in June whose mother is shot in December may, without its mother, be unable to survive a harsh winter in a mountainous area.

Q 3.7 We believe that is essential for there to be a close season for juveniles. This is partly to avoid the risk described in the consultation document of an adult female with dependent young being shot under the mistaken belief that she is a yearling with no dependent young.

However, juveniles also need a close season in order to prevent the culling of very young animals. Advocates believes that it is ethically unacceptable to cull young animals when they have known hardly any life at all. We believe that, where culling is necessary, the policy should be to cull sick, infirm, injured and old animals before any others. This has the advantage of following the natural pattern in which the diseased and old in a herd are the animals least likely to survive, rather than targeting healthy young animals which, as indicated as above, we believe to be unethical.

Q 3.8 It is essential that there should be a close season for males. As indicated earlier, post-rut males need ample feeding time to build up fat and energy reserves. Any disturbance to that feeding time can be detrimental to this process. The disturbance emanating from culling can be particularly unsettling for non-target males and can significantly reduce the feeding time available to them.

Q 3.9 Advocates firmly believes that close seasons should be based purely on welfare considerations. That said, we recognise the need to take account of damage control and cull effectiveness. However, whenever there is a conflict between these factors and welfare considerations, priority must be given to the latter.

Q 4.1 In our view the consultation document gives more weight than is necessary to the implications of the European Convention on Human Rights. We think it is most unlikely that the setting of close seasons in order to safeguard the welfare of managed deer would be found by the Courts to contravene the Human Rights Convention.

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

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

Q 4.2 Advocates is totally opposed to the suggestion that Section 25 of the 1996 Act could be expanded to include any action taken in the interest of deer welfare. Any exception to the prohibition on killing deer during the close season must be carefully worded to ensure that it remains an exception rather than becoming the norm. Wording that permitted any action taken in the interest of deer welfare to be a legitimate exception to the prohibition on killing deer during the close season would be far too broadly drawn and readily open to abuse.

There may be a case for including in Section 25 the killing of deer to prevent the spread of a contagious disease or starvation. Any such exceptions should be narrowly defined and should be subject to the proviso that no other non-lethal means of control would be adequate. This test must be applied rigorously, with the burden of proof being on the person who wishes to kill deer.

The wording as regards disease control should be such as to avoid the kind of mass culling utilised during the foot-and-mouth (FMD) outbreak. It is now increasingly recognised that the widespread contiguous culls were unnecessary and quite possibly played little part in bringing the outbreak to an end. We would not wish to see any exception permitting the killing of deer for disease control purposes leading to an ill-considered widespread cull. In particular, the statute should stipulate that the DCS could not authorise the killing of deer for disease control unless at least two independent veterinary experts certified that such killing was necessary.

Q 4.3 We accept that it is unhelpful that the term “in the interest of public safety” is not defined. We would be opposed to any approach that defined the term so as to permit the killing of every deer that is found close to a public road. We agree with the suggestion in the consultation document that public

safety interests should be viewed in terms of a serious threat to human life beyond that which could be reasonably expected.

Q 4.4 We do not believe that the killing of deer in the close season should be allowed for the purpose of protecting the natural heritage as this is an extremely broad term which we fear is impossible to define satisfactorily.

We are pleased to note from the consultation document that legal advice has indicated that the present legislation could not be used to shoot deer during the close season to protect grouse stocks. We would be completely opposed to any amendment to the legislation that permitted deer to be shot during the close season to protect grouse stocks.

Q 4.5 It is essential that the exceptions are not over-used so as to become the norm. This can hopefully be prevented in the following ways:

- Clear and narrow definitions of the exceptions in the legislation.
- As indicated below, *all* killing of deer in the close season should require prior authorisation from the DCS.
- Legislation should stipulate that the DCS may only grant authorisation in exceptional circumstances and when no other means of non-lethal control is available.
- Legislation should provide that there is a presumption that authorisation should not be given for the killing of deer and that the person who wishes to kill deer has the burden of proving that (i) the circumstances are genuinely exceptional and so merit the grant of an authorisation and (ii) no other effective non-lethal means of control is available.

Q 5.1 As indicated earlier, Advocates believes that the current situation in which the killing of deer in the close season in certain circumstances requires DCS authorisation but in other circumstances requires no authorisation is inconsistent and unsatisfactory. In our view *all* killing of deer in the close season should require authorisation by the DCS.

Q 5.2 We recognise that if, as we advocate, all killing of deer in the close season is subject to prior authorisation from DCS, there may be a need for owners/occupiers to take action in an emergency, i.e. to prevent unexpected damage that is occurring there and then.

We support the proposal in the consultation document that a mechanism should be developed that requires notification to be made to DCS within, say, 48 hours of such emergency killing. DCS will then be required to assess whether the action was reasonable, appropriate and followed the Best Practice Guidance. As the consultation document states, this will firmly place on the owner or occupier the obligation to ensure that their action was appropriate. We agree with the consultation document that if the action was found to be wanting, criminal proceedings should be instigated.

One final point is that in our view the 1996 Act should be strengthened to make it an offence not to humanely kill a wounded deer immediately after it has been wounded and certainly before shooting or attempting to shoot other deer or carrying out any other activities.

Advocates for Animals
1st February 2005