

Rural Affairs and Islands Committee

22nd Meeting, 2023 (Session 6), Wednesday, 13
September

Subordinate legislation cover note

Title of instrument:	Deer (Firearms etc.) (Scotland) Amendment Order 2023 (Draft)
Type of instrument:	Affirmative (see paras. 16 to 19)
Laid date:	21 June 2023
Reporting deadline:	3 October 2023
Coming into force:	The day after the day on which it is made
Motion to approve:	S6M-09640
Instrument drawn to Parliament's attention by DPLRC:	No
Instrument made using powers conferred by:	The Deer (Scotland) Act 1996
Supporting documentation:	Policy note – Annexe A

Purpose of the instrument

1. The policy note states that the purpose of the instrument is to amend the draft Deer (Firearms etc.) (Scotland) Order 1985 to permit the use of night sights for the taking or killing of deer and to amend the minimum ammunition requirements to make non-lead alternatives more accessible for use when taking or killing deer.
2. The stated objective of the instrument is to “increase the tools available to land managers when undertaking deer management by supporting the use of a wider range of firearms which may be more readily available to those who are managing land for a range of purposes and support culling efforts at all times of the day and night”.

Background - the Deer Working Group

3. According to the policy note, this instrument will implement recommendations made by the independent Deer Working Group. The Deer Working Group was established by the Scottish Government in 2017 following concerns about inadequate standards of deer management and the resulting damage to public interests. The independent group was tasked with evaluating both legal and non-legal frameworks for managing wild deer, considering the unique characteristics of each of the four wild deer species in Scotland and the diverse conditions across the region.
4. [The Deer Working Group's 2019 report](#) considered all aspects of deer management in Scotland before making 99 recommendations.
5. Regarding the use of image intensifying sights (night sights) the report recommended that—
 - The Scottish Government should instruct Scottish Natural Heritage to carry out the planned trials into the use of night sights without further undue delay (paragraph 38); and
 - Subject to the successful outcome of Scottish Natural Heritage's trials, paragraph 5(b) of The Deer (Firearms, etc.) (Scotland) Order 1985 should be repealed to allow the use of night sights to shoot deer (paragraph 40).
6. Regarding changes to ammunition specification and in particular the use of non-lead alternatives, the report recommended that—
 - The Scottish Government should make a clear commitment to end the use of lead bullets to shoot deer in Scotland, carry out the necessary research and promotion to enable that change to be made after a transition period and, as a part of that, amend The Deer (Firearms, etc.) (Scotland) Order 1985 so that the specifications in paragraph 3(a) of the Order are suitable for the use of non-lead bullets.

Use of image intensifying sights

7. The instrument would permit the use of light-intensifying, heat sensitive or other special sighting devices ("night sights") for the night shooting of deer.
8. Currently, the 1985 Order prohibits the use of specialised sighting devices such as light-intensifying or heat-sensitive sights for night-time shooting. The policy note explains that the rationale for restricting the use of these sights was related to poaching and concerns that the use of night sights could make it easier for deer to be taken illegally. This means deer culled at night must be carried out using a telescoping sight and a separate light/lamp.
9. In 2022, NatureScot (formally Scottish Natural Heritage) concluded a comprehensive evaluation titled ['Review of the welfare issues related to utilising](#)

[image intensifying rifle sights for nocturnal deer culling'](#). The review found: “no evidence that culling deer at night using thermal imaging technology increased the risk of deer being wounded and found that all deer were humanely dispatched.”

10. The instrument’s policy note also highlights that section 18(2) of the Deer (Scotland) Act 1996 requires that individuals engaging in deer shooting activities at night must possess authorisation from NatureScot. These [authorisations](#) require land managers to complete an application detailing why night shooting is required; what evidence of damage exists; the number of deer culled on the land across the year; and details of the land managers’ fit and competent status.

Changes to ammunition specification

11. The instrument will also reduce the minimum bullet weight that can be used when taking or killing deer. This adjustment aims to expand the range of non-lead ammunition options usable in rifles. The policy note states that—

“These changes will enable those managing deer in Scotland to make use of non-lead ammunition by making non-lead alternatives as accessible as possible, maximising the carcasses which can enter the food chain and supporting the sector in reducing lead ammunition usage.”

12. These changes were informed by [NatureScot’s 2022 Review of the minimum bullet weight for the lawful culling of all deer species in Scotland](#). The review found that—

“Based on the recorded velocities and muzzle energies of <100gr non-lead bullets in currently commercially available factory .243w cartridges, the observed permanent wound casts, and using the recorded wound volumes as an indicator of the permanent wound size and shape, confirm that there would be no detrimental effect on deer welfare.”

13. The policy note also references the UK Health and Safety Executive’s (HSE) [consultation on the prohibition of lead ammunition](#). The consultation, concluded in November 2022 and proposed a ban on the outdoor usage of lead ammunition. The ban, if approved, would be implemented with an 18-month transition period. While the analysis and suggestions from the consultation are yet to be published, the policy note states that “this amendment will help to futureproof legislation should the UK Government decide to ban lead ammunition in the future.

Consultation

14. Under section 21(2) of the Deer (Scotland) Act 1996, Scottish Ministers are required to consult with those likely to be interested or affected by the order. The policy note states that, while no public consultation has occurred regarding the instrument, “stakeholders who have an interest in the issue or are likely to be affected have been consulted.”

Consideration by the Delegated Powers and Law Reform Committee

15. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [27 June 2023](#) and agreed that no points arose.

Parliamentary procedure – affirmative instruments

16. The affirmative parliamentary procedure is set out in Chapter 10 of the [Parliament's Standing Orders](#). Instruments subject to the affirmative procedure cannot come into force unless they are approved by Parliament.
17. It is usual practice for subject committees to take evidence from the Scottish Government in advance of considering the instrument. The Committee will take evidence from the Cabinet Secretary and Scottish Government officials at **agenda item 1**.
18. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The Committee will formally consider the motion during **agenda item 2**.
19. The lead committee must report its recommendation to the Parliament within 40 days of the SSI being laid; where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion that the instrument be agreed. The deadline for the Committee to report on this instrument is 3 October 2023.

For decision

20. **The Committee is invited to—**

- **take evidence from the Minister and Scottish Government officials on the instrument (agenda item 1);**
- **ask the Minister to move, and then to debate, the motion on the instrument (agenda item 2); and**
- **delegate authority to the Convener to sign off the Committee's report to the Parliament on the instrument.**

**Rural Affairs and Islands Committee clerks
September 2023**

Policy Note

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

SSI 2023/Draft

The above instrument is made in exercise of the powers conferred by section 21(1) of the Deer (Scotland) Act 1996. The instrument is subject to affirmative procedure.

The purpose of the instrument is to amend the Deer (Firearms etc.) (Scotland) Order 1985 to permit the use of night sights for the taking or killing of deer and to amend the minimum ammunition requirements to make non-lead alternatives more accessible for use when taking or killing deer.

Policy Objectives

This instrument amends the Deer (Firearms etc.) (Scotland) Order 1985 (“the 1985 Order”) which specifies the classes of firearms, sights and ammunition which may be used lawfully when killing deer in Scotland.

The policy objective is to reduce the impact of deer on our environment by maximising how and when deer can be taken or killed in Scotland while ensuring animal welfare standards are upheld. This instrument will implement recommendations made by the independent Deer Working Group in 2019 to modernise deer management in Scotland. The 2019 report considered all aspects of deer management in Scotland before making ninety-nine recommendations for change, including these legislative changes.

Use of image intensifying sights

The effect of the instrument is to permit the use of light-intensifying, heat sensitive or other special sighting devices (“night sights”) for the night shooting of deer, this is required following reports on deer management in Scotland and research on the use of night sights which found that permitting their use raises no additional welfare concerns than the current methods of night shooting.

At present the 1985 Order does not permit any use of a “sight which is light-intensifying, heat sensitive, or other special sighting device for night shooting”. The policy rationale in restricting the use of these sights was related to poaching, the potential use of night sights resulted in concerns that they make it easier for deer to be taken illegally. Therefore, at present deer culled at night must be carried out using a telescoping sight and a separate light/lamp. Since the 1985 Order was introduced the context of deer management has changed greatly, and species other than deer can now be shot with the aid of night sights.

NatureScot completed their 'Review of the welfare issues relating to the use of image intensifying rifle sights for the culling of deer at night'¹ in 2022. The review found: "no evidence that culling deer at night using thermal imaging technology increased the risk of deer being wounded and found that all deer were humanely dispatched."

Furthermore, section 18(2) of the Deer (Scotland) Act 1996 requires anyone shooting deer from one hour after sunset until one hour before sunrise to be authorised by NatureScot. Authorisations to shoot deer at night are specific and land managers must complete an application detailing why night shooting is required; what evidence of damage exists; the number of deer culled on the land across the year; and details of the land managers' fit and competent status. Therefore, anyone using these sights to shoot deer at night will require an authorisation to shoot deer at night and will need to be fit and competent as a result without a separate authorisation scheme for use of these sights for use at night.

Changes to ammunition specification

The instrument will also reduce the minimum bullet weight that can be used when taking or killing deer. The effect of this is to increase the availability of non-lead ammunition for rifles which will protect human health given concerns around lead contaminations in wild venison.

The criteria for ammunition used to kill deer, as originally set out in the 1985 Order, is as follows:

'For shooting deer of any species, a bullet of an expanding type designed to deform in a predictable manner of not less than 100 grains (6.48 grams) with a muzzle velocity of not less than 2,450 feet per second (746.76 metres per second) and a muzzle energy of not less than 1,750 foot pounds (2,373 joules).'

At present the .243Win calibre rifle is the most commonly used 'all round' rifle in Scotland; used by those who typically only wish to have one rifle but need to shoot all species of deer as well as foxes. There are seven factory types of non-lead bullets suitable for use in the .243Win rifle in Scotland, but none of them meet the currently prescribed 100gr minimum weight. At present, non-lead alternatives for these popular rifles begin at weight of 80 grains.

NatureScot also completed their 'Review of the minimum bullet weight for the lawful culling of all deer species in Scotland'² in 2022. The review found that: "Based on the recorded velocities and muzzle energies of <100gr non-lead bullets in currently commercially available factory .243w cartridges, the observed permanent wound

¹ NatureScot Research Report 1311 - Study to determine deer welfare issues relating to use of image intensifying rifle sights for the culling of deer at night | NatureScot - <https://www.nature.scot/doc/naturescot-research-report-1311-study-determine-deer-welfare-issues-relating-use-image-intensifying>.

² NatureScot Research Report 1312 - Review of the minimum bullet weight for the lawful culling of all deer species in Scotland | NatureScot - <https://www.nature.scot/doc/naturescot-research-report-1312-review-minimum-bullet-weight-lawful-culling-all-deer-species>.

casts, and using the recorded wound volumes as an indicator of the permanent wound size and shape, confirm that there would be no detrimental effect on deer welfare.”

These changes will enable those managing deer in Scotland to make use of non-lead ammunition by making non-lead alternatives as accessible as possible, maximising the carcasses which can enter the food chain and supporting the sector in reducing lead ammunition usage.

Furthermore, the UK wide Health and Safety Executive (HSE) have recently consulted on a ban on the use of lead ammunition under UK REACH. The consultation closed in November 2022 and included proposals to ban outdoor use of lead ammunition, with an 18-month transition period from the point of the restriction coming into force. HSE are expected to publish consultation analysis and recommendations later this year, but this amendment will help to futureproof legislation should the UK Government decide to ban lead ammunition in the future.

Taken together, these changes to restrictions on ammunition and night sights will increase the tools available to land managers when undertaking deer management by supporting the use of a wider range of firearms which may be more readily available to those who are managing land for a range of purposes and support culling efforts at all times of the day and night. Making these changes will help maximise land managers’ deer management efforts, supporting them in reducing deer impacts and damage and protecting our natural environment.

Consultation

Under section 21(2) of the Deer (Scotland) Act 1996, Scottish Ministers are required to consult with those likely to be interested or affected by the order. No public consultation has been taken place on the instrument, but stakeholders who have an interest in the issue or are likely to be affected have been consulted.

NatureScot have been involved throughout the development of this amendment, and our agencies like Forestry and Land Scotland are also supportive. NatureScot have been involved throughout the development of this amendment, and agencies such as Forestry and Land Scotland are also supportive. Key stakeholders from land management and eNGO’s, including members of the Deer Management Round Table (DMRT), were invited to share their views on the proposed changes. Stakeholders were broadly supportive of the changes laid out in this SSI.

Consideration has also been given to the views of the Scottish Animal Welfare Commission (SAWC) who were also asked to consider these changes, alongside other recommendations made by the Deer Working Group. SAWC were supportive of these changes being implemented, following the satisfactory outcome of NatureScot trials.

Impact Assessments

Full Impact assessments have not been prepared for this instrument, as pre-screening indicated that the changes made to the 1985 Order by this instrument will have no, or no significant, impact on the private, voluntary or public sectors in Scotland.

Financial Effects

The Minister for Green Skills, Circular Economy and Biodiversity confirms that no BRIA is necessary as the instrument has no financial effects on local government or on business.

Scottish Government
Directorate for Environment and Forestry
June 2023