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*Dear Mike,*

DEER (AMENDMENT) (SCOTLAND) BILL

You requested some background briefing on this Bill and an indication of our Ministers' views on the night shooting provisions in particular,

\* I attach three notes which deal with:- \*

- (1) the main issues raised by the Bill;
- (2) the need for night shooting;
- (3) the main organisations involved.

The Secretary of State and Lord Mansfield recognise that, like all measures concerned with wildlife, the Bill will raise considerable interest particularly in the House of Lords. The proposals in the Bill are already a compromise between the various interests involved. There will no doubt be pressure to adopt the continental and English practice of banning night shooting, but on the other hand farmers and crofters, especially in the Highlands, will wish to ensure that they have full freedom to protect their crops in remote areas where there has been traditional difficulty for the Red Deer Commission to play its part in limiting numbers of red deer. Lord Mansfield has agreed with Lord Glenarthur, who is the promoter of the Bill in the House of Lords, that it should be made clear that the position will be reviewed in the light of the arguments which are put forward during the Second Reading debate later this month.

\* Passages deleted and closed, 40 years,  
under FOI Exemption.

*Wayland, 18 October 2012 \**

I hope this information is helpful to you, and if you require anything further please let me know.

*Muir*  
A MUIR RUSSELL  
Private Secretary

## DEER (AMENDMENT) (SCOTLAND) BILL

## THE MAIN ISSUES RAISED BY THE BILL

The Bill is a Government-sponsored measure, following extensive consultation with outside interests (which are summarised in Note 3). The main issues that emerged during consultation were:-

1. Damage by deer
2. Deer poaching
3. The powers of the Red Deer Commission (RDC).

Damage by Deer (Clauses 3, 4 and 8 of the Bill)

In Scotland deer are increasing in numbers and extending their range. The main problems arise in forests which are being replanted, where roe deer are becoming a serious menace. The most effective way of keeping numbers down is by shooting at night: but at present only the occupier in person (and this excludes employees of the Forestry Commission) can do this. The Bill therefore provides for delegation of the right to shoot at night, subject to specific authorisation by the RDC.

Night shooting is disliked by many in the deer shooting and welfare lobbies, who regard it as unsporting, cruel and dangerous. It is certainly unsporting, but in the right hands it is humane and safe. The forestry interests both public and private would maintain that, in Scottish conditions, it is indispensable.

Deer Poaching (Clauses 7-9)

The increasing demand for venison has raised its price and made poaching a profitable occupation. The Bill proposes various counter-measures including:-

- very much increased penalties;
- more effective controls on dealing in venison, including a new offence of possessing the carcass of a deer known to have been killed unlawfully;
- a restriction on the delegation of the right to shoot deer out of season (delegated rights are alleged to have been widely used as authorisations to poach).

None of these provisions is controversial, but it may be said that they do not go far enough and that, for example, no deer carcass should be sold without an official tag, and that no deer should be shot in defence of crops or forestry without the specific permission of the landowner.

Powers of RDC (Clauses 1-5)

The main issue is whether the remit of the RDC should be widened to include species other than red deer, since the problems associated with these other species are becoming more pressing. The Bill steers a moderate course by:-

- (a) giving the RDC full powers of control over sika deer (closely related to red deer);

- (b) extending the RDC's advisory function so as to enable other species to be covered.

Other Questions liable to be raised on Bill

1. Why does the Bill not simply extend the provisions of the Deer Acts 1963 and 1980, and of the Schedule to the Wildlife and Countryside Act 1981, to Scotland? Through these Acts, particularly the 1981 Act, the law in England now diverges considerably from that in Scotland: for example in England and Wales it is illegal to shoot at night, and the use of shotguns against deer is very much restricted. However, a separate code for Scotland has been considered necessary since 1959 to meet the special problems there. The Bill will bring Scotland more into line with England in several respects, including penalties and the power to control types of firearm and ammunition.
2. Should not the tenant get the permission of the landlord before shooting deer at all? The thought here is that deer are an asset which belongs to the landowner, and this underlies a number of specific amendments (eg relating to night shooting and poaching) which are liable to be raised. The other side of the question is that deer are increasingly a pest and the user of the land for other purposes has legitimate interest in their control.
3. Should not deer farming be controlled by law? Deer farming is becoming increasingly important, and the need for a welfare code is beginning to emerge. But a Private Member's Bill seems hardly the place for such a potentially sensitive and complex code to be introduced.

## DEER (AMENDMENT)(SCOTLAND) BILL

## NEED FOR NIGHT SHOOTING PROVISIONS

The provisions in clause 8 regarding night shooting are, arguably, among the most important in the Bill.

The need for enlargement of the existing powers to shoot at night arises principally from the growth of the roe deer population in Scottish forests. Many of these, especially those owned by the Forestry Commission, have reached first rotation stage and are being re-stocked. This is the stage at which roe deer are at their most destructive, as they browse the young shoots in preference to almost any other form of diet. The end-result may well be to delay the timber harvest by 3 years and to reduce significantly the amount and quality of the crop. Generally speaking, privately-owned plantations in Scotland are not at the re-stocking stage and are less vulnerable to roe deer: but their danger point will come later.

The only effective method of keeping roe deer damage within tolerable proportions is through a heavy and sustained cull. Most culls at present are not heavy enough and the population is rising. To be effective, night shooting is essential as deer are nocturnal creatures. Dawn and dusk shooting may be sufficient for bucks but does are twice as numerous and are mainly culled during the winter (the open season for females). In winter, daylight is short and uncertain, and night shooting is regarded, especially by the Forestry Commission, as an indispensable adjunct.

In the hands of those who are skilled and know the ground, night shooting with a spotlight, while of course not at all sporting, is highly efficient and humane. The deer freeze in the light and a careful and exact aim is possible. On the other hand, it is not easy to follow up and finish off a beast that has been injured by a night shot.

At the moment any occupier has the right to shoot at night a deer found on his enclosed land or woodland. The Bill proposes to leave this right untouched, except by way of limiting the right to shoot to circumstances in which night shooting is necessary to prevent damage to crops, trees etc. The Bill also provides for the right to shoot being delegated by the occupier - a power needed by the Forestry Commission because, in terms of a legal ruling which they have obtained, the occupier in their case is the Forestry Commission itself and does not include any of the Commission's servants or employees.

Since night shooting demands skill and knowledge of the ground, and since the practice should not be employed routinely, it is provided that any delegation of the right to shoot should be vetted by the Red Deer Commission. They are to satisfy themselves both that the shooting is necessary to prevent damage and that the person or persons who are to be authorised are fit and competent to undertake the shooting.

Night Shooting within the Bill as a whole

Because of the wide variety of interests affected by the Bill, and the views expressed upon the various matters with which it deals, many of the provisions of the Bill are of a compromise nature (and the same applies to the Deer (Scotland) Act 1959 which the Bill amends). Particularly is this true of clause 8. It tightens up the existing law on out of season shooting - a change which was accepted by farmers and foresters on the understanding that there would be a measure of relaxation on night shooting. To withdraw the night shooting relaxation on its own would upset the package and prejudice the chances of clause 8 as a whole. This would be particularly regrettable, since it contains much of the "meat" of the Bill.

## DEER (AMENDMENT) (SCOTLAND) BILL

## NOTE ON ORGANISATIONS

## A. The main pressure groups are:

Scottish Landowners' FederationPresident: Sir Donald Cameron of Lochiel

The Federation represents the interests both of deer forest owners and of agricultural owner-occupiers, and as such is concerned both with conservation and control. Has yet to declare its position on the Bill as published, but indications are that it will in the end accept it as a reasonable compromise between the interests.

National Farmers' Union of Scotland

NFUS have so far kept a low profile on the Bill. Their interest is to see as little change as possible and in particular no erosion of the present rights of agricultural occupiers.

Timber Growers ScotlandChairman: John Brewis

The representative body for private commercial forestry in Scotland, though many of its members have interests in deer also. Supports the Bill.

British Deer SocietyPatron: HRH The Prince of WalesPresident: Lord Dulverton

The body principally concerned with conservation of deer. Their stated view on night shooting is "we reluctantly concede that in specific circumstances where normal methods of control have failed, night shooting may be necessary".

- B. Other groups with an interest are the British Field Sports Society and the British Association for Shooting and Conservation, both of which broadly support the Bill; and the British Deer Farmers' Association, which may query why the Bill contains no deer farming provisions.

## C. Statutory bodies:

The Red Deer Commission

The Government's statutory adviser on red deer. Its membership includes nominees of all the major interests - including Lord Dulverton from the BDS and the Duke of Atholl from the SLF. Under its terms of reference it has to deal even-handedly as between conservation and control; and its composition is balanced so as to achieve this. It is firmly behind the Bill.

The Forestry Commission

The FC is both a Government department and the major commercial timber grower in the kingdom. In the latter capacity it will face considerably increased costs if the Bill does not pass.

The Nature Conservancy Council

NCC's interests in deer are minor, since (a) the species is not endangered and (b) conservation of red deer is the responsibility of RDC. So far as its interests goes, viz for deer management on lands under its control, it supports the Bill.

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