EXECUTIVE NOTE

THE MUNTJAC KEEPING (SCOTLAND) ORDER 2011

SSI 2011/172

The above instrument was made in exercise of the powers conferred by sections 1 and 10 of the Destructed Imported Animals Act 1932 (the "1932 Act"). The instrument is of no effect until it is approved by an affirmative resolution.

Policy Objectives

Muntjac deer are an invasive non-native species in England and Wales. They are now widespread in south and central England and Wales, with a patchy distribution between the Humber and the Scottish border. There are currently no verified records of wild Muntjac in Scotland, but there have been a number of unverified records (between 1990 and 2000).

In 2006 the Deer Commission Scotland (DCS) (now Scottish Natural Heritage) carried out an audit of known captive populations of Muntjac in Scotland. Of the eight populations known about in 2001, only three remained in 2006. However of the eight original populations – four had recorded escapes – at least one of which is still thought to be at large.

A small number of muntjac are known to be kept for exhibition. It is likely due to their size and ease of keeping that there are other captive populations of which we not aware of in individual collections.

In addition, muntjac are small enough to be easily moved, and so it is quite possible that someone might transport some animals from England for release in Scotland (particularly as they are becoming increasingly popular as a quarry species in England).

Muntjac have considerable negative impact on ground flora species that are not generally grazed by native herbivores, such as bluebells. SNH consider that Muntjac if established in the wild are likely to pose a risk to the Habitat Action Priority habitats of upland oak wood and upland mixed ashwoods, and habitats "Old oak woods with llex and Blechnum and Tilio-acerion".

This secondary legislation aims to reduce the threat posed by people keeping non-native muntjac deer by prohibiting their keeping except under licence, and by ensuring that licences include the minimum conditions needed to prevent or restrict muntjac escaping, and ensuring that the appropriate authorities have the information about escaped muntjac needed to ensure that problems can be deal with rapidly if escapes do occur.

It considered necessary to regulate the keeping of muntjac as an escape of a number of muntjac from a wildlife park in 2004 highlighted the lack of any provision to deal with escapes of this species.

The listing of muntjac deer species on Schedule 9 of the Wildlife and Countryside 1981 Act has not prevented muntjac escaping from captivity into the wild.

Having muntjac defined as deer under section 45(2) of the Deer (Scotland) Act 1996 is not considered desirable as the aim is to prevent muntjac becoming established. Listing under this Act would set out unnecessary issues relating to control and sport shooting (such as close seasons).

It is not considered necessary for it to be an offence to release Muntjac under the 1932 Act on the basis that it is already an offence to release them from captivity under section 14 of the Wildlife and Countryside Act 1981, under which penalties are much greater.

Consultation

A public consultation took place from 15 June 2009 to Friday 4 September 2009 as part of the overall Wildlife and Natural Environment Bill Consultation, which involved consultation with a large number and range of stakeholders.

A full list of those consulted is attached to the consultation report published on the Scottish Government website, it includes the Deer Commission Scotland (now Scottish Natural Heritage), the British Deer Society, the Association of Deer Management Groups, the Forestry Commission Scotland and Scottish Natural Heritage.

Consultations were also held with key stakeholders including those from within government and agencies as well as local government, those outwith government including non-governmental organisations representing a number of interests (environmental, sporting, animal rights, land etc), and research organisations.

The analysis of the consultation can be found at:
http://www.scotland.gov.uk/Publications/2010/02/15104834/17 .

The majority of respondents (85.3% of 136 responses) agreed with the proposal to regulate the keeping of Muntjac. Only 1.5% disagreed, while the others responded with caveats and concerns. A number of respondents questioned whether the proposed action was already too late, and whether proposals would achieve limited success.

Impact Assessments

An equality impact assessment has not been completed as it was agreed at the consultation stage that there were no equality impact issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is limited, three businesses were thought to keep muntjac at the time of consultation although when contacted one confirmed they did not keep muntjac. We estimate that lawful keeping will require individuals to improve enclosures at an average cost of £500.

Scottish Government
Rural and Environment Directorate

January 2011

Final Business and Regulatory Impact Assessment

Title of Proposal

The Muntjac Keeping (Scotland) Order 2011

Purpose and intended effect

Objective

Invasive Non-Native Species (INNS) are recognised as one of the greatest threats to global biodiversity and as having a huge economic cost to a very wide range of sectors, probably of the order of several billion pounds annually in Britain.

This secondary legislation aims to reduce the threat posed by people keeping non-native muntjac deer, both by preventing muntjac escaping and by providing powers to deal with muntjac if they are released or escape.

Background

Originally from China, muntjac are an invasive non-native species in England and Wales. They are now widespread in south and central England and Wales, with a patchy distribution between the Humber and the Scottish border. They have considerable negative impact on ground flora species that are not generally grazed by native herbivores, such as bluebells. There are currently no verified records of muntjac in Scotland, but there have been a number of unverified records (between 1990 and 2000). SNH consider that if they were to establish in Scotland, muntjac would pose a risk to the Habitat Action Priority habitats of upland oak wood and upland mixed ashwoods, and habitats "Old oak woods with Ilex and Blechnum and Tilio-acerion".

In 2006 the Deer Commission Scotland (DCS) carried out an audit of known captive populations of muntjac in Scotland. Of the eight populations known about in 2001, only three remained in 2006. However of the eight original populations – four had recorded escapes – at least one animal from these escapes is still thought to be at large. Due to the size and ease of keeping of muntjac it is quite possible that there are other captive populations of which Scottish Natural Heritage are not aware of in individual collections. In addition, muntjac are small enough to be easily moved and so it is quite possible that someone might transport some animals from England for release in Scotland (particularly as they are becoming increasingly popular as a quarry species for shooting in England).

Rationale for government intervention

The listing of muntjac deer species on Schedule 9 of the Wildlife and Countryside 1981 Act has not prevented muntjac escaping from captivity into the wild. The escape of a number of muntjac from a wildlife park in 2004 highlighted the lack of any provision to deal with escapes of this species. Having muntjac defined as deer

under section 45(2) of the Deer (Scotland) Act 1996 is not considered desirable as the aim is to prevent muntjac becoming established. Listing under this Act would set out issues unnecessary relating to control and sport shooting (such as close seasons).

This proposal contributes towards the Scottish Government National Outcomes:
- We reduce the local and global environmental impact of our consumption and production.
- We value and enjoy our built and natural environment and protect it and enhance it for future generations.

Consultation

Within Government

These proposals were consulted as part of the overall Wildlife and Natural Environment Bill Consultation between Friday 15 June and Friday 4 September 2009. The proposals contained in the public consultation document were consulted widely within government before consultation, including all relevant areas of Rural Directorate. These proposals originated from the Deer Commission Scotland (now Scottish Natural Heritage) and they have been intimately involved in the development of the Order.

Public Consultation

A Stakeholder Forum was established by the Scottish Government in March 2009 both to help inform the development of the Wildlife and Natural Environment Bill consultation document, and as a means to communicate with key stakeholders. Its membership included organisations such as:

- Deer Commission Scotland
- Scottish Natural Heritage
- Scottish Gamekeepers Association
- Association of Deer Management Groups
- Royal Society for the Protection of Birds
- Advocates for Animals

These Wildlife and Natural Environment Bill Consultation took place between Friday 15 June and Friday 4 September 2009 and involved consultation with a large number and range of stakeholders.

These included key stakeholders including those from within government and agencies as well as local government, those outwith government including non-governmental organisations representing a number of interests (environmental, sporting, animal rights, land etc), and research organisations.

The majority of respondents (85.3% of 136 responses) agreed with the proposal to regulate the keeping of muntjac. Only 1.5% disagreed, while the others responded with caveats and concerns. A number of respondents questioned whether the

proposed action was already too late, and whether proposals would achieve limited success.

Business

At the time of consultation there were thought to be 3 businesses which held muntjac. Two were contacted:
The Scottish Deer Centre, Cupar KY15 4NQ
One organisation was contacted that said they did not keep muntjac any longer and did not therefore wish to comment on the proposals.

Options

Sectors and Groups Affected

Significant resources are currently devoted to non-native species issues and tackling invasive non-native species by both individuals such as landowners and organisations such as large landowning organisations (e.g. National Trust for Scotland) as well as Environmental Non-Government Organisations.

If muntjac were to become established in Scotland – something this Order is trying to prevent – they would be likely to cause major damage to coppice regeneration and, if densities increased to a high level, they would be likely to damage cereal crops, and nursery and orchard crops. They would therefore impact on foresters, farmers and some landowning organisations, as well as resulting in the loss of some plants of conservation importance, or the need for additional mitigation measures to prevent damage.

Other sectors that will be affected will be those keeping or wishing to keep muntjac deer who will need to apply for a licence and abide by the regulations. This will require enclosures to be a particular standard, as well as record keeping to be maintained and the animals to be transported securely.

Option 1 - Do nothing or maintain the current situation

Amendments to the Wildlife and Countryside Act 1981 are proposed in the Wildlife and Natural Environment Bill (which is currently being considered by Parliament). Proposals include strengthening the legislation relating to release and proving powers to regulate keeping and require notification of invasive species. New powers are also proposed to allow the control of invasive non-native species.

Maintaining the present situation would mean that Schedule 9 of the 1981 Act would continue to be the only legislation relating to muntjac – making it an offence to release or allow muntjac to escape from captivity (this would be true until any changes were made by the Wildlife and Natural Environment Bill as described above). While it is intended to be preventative, the 1981 Act is not currently considered to be sufficient to prevent introduction of a high risk species such as muntjac (which has previously escaped from collections on more than one occasion).

The option to maintain the present situation would be more likely to lead to the release/escape of muntjac into the wild. In addition there would not be any powers to require Scottish Ministers to be informed when an escape occurs and therefore for rapid control measures to be undertaken.

Option 2 – Regulating the keeping of muntjac by order under the Destructive Imported Animals Act 1932

The main purpose of the proposed order for muntjac is preventative: to stop muntjac escaping in future and to provide powers to deal with muntjac if they are released or escape. This would have positive long term environmental and economic benefits.

Benefits - Option 1 - Do nothing or maintain the current situation

The benefit of Option 1 would be the fact that as no regulation would be made, no licences issued would be issued and no premises inspected, cutting down on government administration. The benefit to individuals and businesses would be that they could keep muntjac without regulation.

Benefits - Option 2 – Regulating the keeping of muntjac by order under the Destructive Imported Animals Act 1932

The impacts of invasive species result in not only loss of native biodiversity, but also loss of ecosystem services, degradation of quality of life as well as large economic costs.

Invasive non-native species are one of the major factors causing biodiversity loss and have been a major source of extinctions, especially on islands.

The muntjac order should prevent muntjac becoming established and therefore ensure that they do not contribute to an increase in these negative economic and environmental impacts.

The order would also ensure that Scottish Ministers need to be notified of escapes as well as muntjac on land, increasing the likelihood of early successful control action rather than muntjac becoming established.

Costs - Option 1 - Do nothing or maintain the current situation

There would be no costs to businesses who wish to keep muntjac as they would not be required to improve enclosures.

The report, The Economic Cost of Invasive Non-Native Species on Great Britain estimates that deer damage to conservation interests in Scotland is currently £106,774 annually. However, coppiced broadleaved woodlands are particularly susceptible to deer damage, especially that caused by fallow and muntjac and if muntjac were to become established these costs would be likely to rise significantly.

The report estimates that 25% of new plantations are damaged by non-native deer in Scotland costing £383,050 for Scotland. There are 2 non-native deer species in Scotland, so diving this figure in half gives an estimate of what muntjac damage might be were muntjac (£191,525) to become established. However, only 1% of this is used as an initial value as muntjac will increase over time, giving £1915 (rising to £191,525). The above report also estimates that the cost for protecting new plantations from muntjac deer is estimated to be £873 per hectare, thereby providing increased costs for foresters and land managers. There were 2600 new plantations in Scotland in 2009. Assuming an average size for each plantation of 100 hectares and that only 1% of these will initially need protecting due to the range of the muntjac, costs are estimated at £2,269,800. It should be noted that these costs would be expected to rise significantly as muntjac populations increased.

Muntjac would be likely to cause major damage to coppice regeneration and, if densities increased to a high level, they would be likely to damage cereal crops, and nursery and orchard crops. They would therefore impact on foresters, farmers and some landowning organisations.

Deer also cause economic costs losses due to causing road traffic accidents known as deer vehicle collisions (DVCs). In England 25% of deer vehicle collisions are caused by muntjac, costing £2,312,250. In Scotland, the current cost of DVC attributed to non-native deer is £193,800. Using the percentage of DVCs in England attributed to muntjac of 25% as the same for Scotland if they were to become established gives a figure of £48,450. To find an initial cost when muntjac are not well established, 1% of this figure is used, giving £485 per annum. It should be noted that these costs would be expected to rise significantly as muntjac populations increased.

<u>Costs - Option 2 – Regulating the keeping of muntjac by order under the Destructive Imported Animals Act 1932</u>

The proposed order would require individuals to apply for a licence before keeping these animals. There will be a cost of £65 for a licence.

Where a business wishes to keep a muntjac they will need to comply with the licence conditions. No improvements to the enclosure may be required if the animal is being kept securely but if the enclosure is unsuitable then improvements will be need to be undertaken.

Assuming that there are 2 businesses keeping muntjac and that these both apply for a licence, and that lawful keeping requires individuals to improve enclosures at an average cost of £500, it can be estimated to cost £1000 (although it should be noted that one enclosure is already thought to be likely to be appropriate).

The policy and administration costs are estimated to be as follows:
Site visit – the known populations are in Fife – average 1 hour travel each way, 30 mins visit.
Administration – 30 mins writing up recommendations
Equals maximum 3 hours of Deer Management Officer's time @ £11.57 an hour = £34.71.

SG licensing team costs are estimated at 2 hours of B1 time @ £15.07 an hour = £30.14.

Total equalling £64.85

Scottish Firms Impact Test

At the time of consultation, the process required was a Regulatory Impact Assessment which did not require face to face discussions with businesses; none have therefore been held, although two businesses thought to keep muntjac were contacted by telephone. Since then, Business and Regulatory Impact Assessments have been introduced.

When these proposals were consulted on, 3 businesses were thought to keep muntjac. We were able to contact 2 of the 3 possible business affected. However, when one was contacted to discuss the proposals, they denied keeping muntjac and did not therefore wish to comment on the proposals.

One business – whose enclosure is considered to be of a good standard to keep muntjac – indicated that the proposals would not cause them any significant problems. We estimate that lawful keeping will require individuals to improve enclosures at an average cost of £500.

Competition assessment

The main impact of these proposals would be on wildlife parks as these are expected the most likely to keep muntjac. It is unlikely that the display of muntjac deer would be critical to a wildlife parks business. If therefore a wildlife park was unwilling to abide by the regulations relating to muntjac deer, they could chose to display another type of deer, or other animals. In addition, the enclosure regulations are not hugely onerous and any park should already under the current legislation be ensuring that animals cannot escape from enclosures.

It is not therefore considered likely that these proposals affect the ability of firms to compete.

Legal Aid Impact test

It is the option of the Access to Justice Team that as there would be no right to appeal associated; there are no legal aid implications from these reforms.

Enforcement, sanctions and monitoring

The main purpose of the proposed order for muntjac is preventative: to stop muntjac escaping in future and to provide DCS with powers if muntjac are released or escape (either from a known population, or deliberately translocated as it appears they may have been in England). As with other orders under the Destructive Imported Animals

Act 1932, these are enforced by the police. As we are only aware of 2 businesses that may have muntjac, and the order is preventative, this is not expected to result in any significant extra work for the police.

Staff from Scottish Natural Heritage will carry out inspections of the applicant enclosures at the time of applying. A licence will last for a period of 60 months. The keeper must provide access to the premises if required for the purpose of ensuring compliance with the any requirement of the licence.

Penalties are as follows:

- Keeping a Muntjac without a licence - £500 fine, plus £200 per animal over 4 animals
- Breaching a licence condition - £200 fine
- Obstructing an enforcement officer - £500 fine
- Occupier of land not notifying Scottish Ministers of the presence of Muntjac on the land - £200 fine

Implementation and delivery plan

The Scottish Government Natural Resources Division is responsible for the implementation of this legislation. They will work with Scottish Natural Heritage to ensure inspections of the premises to which the application refers are carried out.

The aim of this legislation is to prevent muntjac escaping from captive populations within Scotland and to ensure that if muntjac do escape that they can be dealt with quickly to prevent them becoming established. In measuring the success it will be necessary therefore to record any escapes that occur and the reasons for those escapes. It will also be necessary to determine whether the measures preventing muntjac becoming established from any escapes are successful. These will be reviewed after 10 years – this will provide 2 cycles of licence holding (at 5 years each).

All businesses thought to be keeping muntjac will be contacted again to discuss the requirements and explain the application process. In addition, all other zoos and wildlife parks will be contacted to notify them of the new legislation. The Order and Regulations will come into force on 1 July 2011.

The licensing will be initially carried out by Scottish Government and following the transfer of licensing to Scottish Natural Heritage under the Wildlife and Natural Environment Bill proposals, will be undertaken by Scottish Natural Heritage.

Summary and recommendation

Summary costs and benefits table

Option	**Total benefit per annum:**	**Total cost per annum:**
1 - <u>Do nothing or</u>	Economic, environmental,	Economic, environmental,

maintain the current situation	social - None	social: New plantations damage £1915* Plantations protection £2,269,800* Deer Vehicle Collisions £485* *It should be noted that these costs would be expected to rise significantly as muntjac populations increased. Policy and administrative None
2 - Regulating the keeping of muntjac by order under the Destructive Imported Animals Act 1932	Economic, environmental, social - Prevents muntjac becoming established and therefore ensures that they do not contribute to an increase in negative economic and environmental impacts.	Economic, environmental, social Licence costs plus estimated enclosure costs - £1130 Policy and administrative - £64.85

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.