This document has been prepared to accompany a talk by Tim Ryan of Warners Solicitors. To the best of his knowledge it is accurate at the date it was produced. It is not intended to be a comprehensive statement of the law, or to cover all issues and circumstances that may arise, and should not be relied on as a substitute for taking legal advice when required.

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THE PROTECTION OF BIRDS AND ANIMALS

Wild Birds
The Wildlife and Countryside Act 1981 (W&CA) is the key legislation under which wild birds are protected. It applies to all European wild birds, other than “poultry” (domestic fowls, geese, ducks, guinea-fowls, pigeons, quails and turkey) and “game birds” (pheasant, partridge, grouse, black or ptarmigan).

Certain species (listed in schedule 2), including some ducks and geese, snipe and woodcock, may be killed outside the close season (but not on Sundays in some areas).

Otherwise, except where the W&CA allows, it is illegal (under s.1) to kill, injure or take any wild bird. Nests (in most cases only whilst in use or being built) and eggs are also protected.

Even where wild birds or game birds may be killed, certain methods of killing or taking are generally illegal (under s.5), namely the use of:

- a trap, snare, electrical device or poison;
- a net, baited board, bird-lime or similar substance;
- a bow or crossbow;
- an explosive;
- an automatic or semi-automatic weapon;
- a shotgun with a barrel diameter greater than one and three quarter inches;
- a lamp or a sighting device for night shooting;
- a mirror or other dazzling device;
- gas, smoke or a chemical wetting agent;
- a sound recording as a decoy;
- a live bird or animal as a decoy;
- a vehicle in immediate pursuit.

It is also an offence (under s.8) to keep or confine any bird in any cage or other receptacle which is too small to allow it to stretch its wings freely.

Wild Mammals
All wild mammals are protected against cruelty under the Wild Mammals (Protection) Act 1996, which makes it an offence to mistreat any wild mammal with intent to inflict unnecessary suffering.

Protected Wild Animals
Many animals (not just mammals) are also protected under the W&CA. These are listed in schedule 5, and include bats, dormice, newts, red squirrels, otters, adders and grass snakes as well as many species of beetles, butterflies, moths and other insects.

It is illegal (under s.9) to kill, injure or take any schedule 5 animal. It is also an offence to damage or obstruct access to any place that is used for shelter or protection, or to disturb any such animal in occupation.
There is an absolute ban (under s.11(1)) on the use of self-locking snares, bows, crossbows, explosives and live decoys. These cannot be used to kill or take any wild animal, whether protected under the W&CA or not.

A limited number of species, listed in schedule 6, receive special protection – namely badgers, bats, wildcats, dolphins, dormice, hedgehogs, pine martens, otters, polecats, porpoise, shrews and red squirrels. For these, it is illegal (under s.11(2)) to make use of the following:

- a trap, snare, electrical device or poison;
- an automatic or semi-automatic weapon;
- a lamp;
- a sighting device for night shooting;
- a mirror or other dazzling device;
- gas or smoke;
- a sound recording as a decoy;
- a vehicle in immediate pursuit.

**European Protected Species**

The Conservation of Habitats and Species Regulations 2010 (known as the “Habitats Regulations”) give protection to certain animal species which are known as European protected species. These include all bats, otters, dormice, Scottish wildcat, dolphins, porpoises and whales. It is an offence to deliberately (recklessly in Scotland) capture, injure or kill any such animal, take or destroy eggs, damage or destroy breeding sites or resting places.

**Badgers**

Badgers, although subject to the special protection under schedule 6 W&CA, are not listed as a protected species under schedule 5 W&CA. This is because they receive protection all of their own under the Protection of Badgers Act 1992.

It is illegal to kill, injure, or take a badger (under s.1); or to cruelly ill-treat, dig for one or use badger tongs (under s.2).

It is also an offence (under s.3) to interfere with a badger sett, by damaging it, obstructing an entrance, entering a dog, or disturbing a badger in occupation.

A badger sett is any structure or place with indications of current use by a badger. It would not include old setts that are no longer being used, but it would include, for example, a derelict shed that has been taken over by a badger as a shelter or refuge. Where digging is alleged to have taken place, the law requires evidence that the system of tunnels and chambers themselves have been destabilised, damaged or otherwise compromised before an offence is made out. Where there are allegations involving badger setts, it is usually vital that a suitably qualified expert is instructed to inspect the site as early as possible.

Where badgers or setts are involved, the law is strictly enforced and there are very few exceptions.
Deer

Deer, also not protected under the W&CA, receive protection under the Deer Act 1991. Offences include:

- taking or killing during the close season or at night;
- use of traps, snares, poison or nets;
- use of arrows, spears or prohibited firearms and ammunition;
- shooting from a moving vehicle (or while the engine is running);
- use of a moving vehicle to drive deer.

During the close season, farmed deer may be killed, but only by their keeper, his servants or agents.

“Night” begins at the end of the first hour after sunset and ends at the beginning of the last hour before sunrise.

Occupiers of cultivated land, pasture or enclosed woodland, may rely on “the farmer’s defence” to shoot deer to prevent damage to crops etc. Strict requirements must be complied with and anyone other than the occupier (or a person with the right to take deer) will need authority in writing.

Prohibited firearms and ammunition are set out in a schedule, and include shotguns, air weapons and rifles of less than .240 calibre or with muzzle energy of less than 1700ft/lb. A 12 bore shotgun, firing a single slug or AAA cartridges, may be used under the farmer’s defence, or, where the barrel is less than 24” in length and with specified ammunition, as a slaughtering instrument. For the smaller deer, Chinese water deer and muntjac, a .22 rifle with muzzle energy of at least 1000 ft/lb may be used. In all cases, bullets must be soft or hollow nosed.

Game

Under the Game Act 1831, hares, pheasants, partridges, grouse, heath or moor game and black game may not be killed or taken on a Sunday or Christmas day, but otherwise may be shot outside the close season (The penalty is limited to a fine of up to £200 (per head).

For hares there is no close season, but they may not be killed or taken a Sunday or Christmas Day. Rabbits can be killed or taken at any time of the year (indeed occupiers of land have a legal obligation to control rabbits.)

The use of firearms at night for shooting hares and rabbits is prohibited under the Game Act 1880. The penalty is a fine of up to £200. There is an exemption, under schedule 7 W&CA, for the occupier of the land or one other person authorised by him, if the occupier (unless he has the exclusive right) has written authority of one other person entitled to kill or take ground game.
Licences
Under much of the legislation protecting wild birds and animals, certain otherwise unlawful activities can be carried out under licence. Section 16 W&CA permits licences to be issued for a number of reasons, which include conservation and the prevention of serious damage. Similar provisions apply under the Protection of Badgers Act 1992 and the Deer Act 1991. In most cases licences require an application to Natural England, and will only be issued where there is no other satisfactory solution.

Natural England issues a number of General Licences each year, for which no application is necessary. (See below in relation to the control of pest birds.)

Humane Despatch
The humane dispatch of injured animals can always be lawfully carried out (unless the injury has been caused unlawfully in the first place), provided it can be justified as necessary and proportionate. In the case of deer, dependent young may also be killed if they have been or are about to be lawfully deprived of their mother.

Animals under the Control of Man
The Animal Welfare Act 2006 (AWA) protects any animal of a kind which is “commonly domesticated in the British islands, is under the control of man or is not living in a wild state”. Animals are clearly under the control of man where they are kept as pets, working animals or farm animals. But so, too, are reared pheasants and partridges (before they are released) and wild animals once they are caught, such as the magpie in the Larsen trap or the fox in the snare.

An offence is committed (under s.4) where a person’s act or failure to act causes a protected animal to suffer unnecessarily and this was reasonably foreseeable.

An offence is also committed (under s.9) where a person fails to provide for the needs of any animal for which he is responsible. These needs include a suitable environment, a suitable diet, normal behaviour patterns, housing with or apart from other animals as required and protection from pain, suffering, injury and disease. The failure to provide is by itself an offence and no actual suffering has to occur.

DEFRA has issued various welfare codes under the AWA, to provide “practical guidance”. These include a Code of Practice for the Welfare of Gamebirds Reared for Sporting Purposes (in force since 31 January 2011). Anyone involved with game bird management should have a copy and, so far as possible, follow it.

There is also a Dog Welfare Code, which applies to all dogs, not just pets. It is largely commonsense and there is nothing which should be of concern in connection with working dogs.

Although failure to follow a Code of Practice is not illegal, the Codes are admissible in court proceedings and a court will have regard to any relevant Code when considering liability. All the Codes of Practice are available to be viewed and downloaded from the DEFRA website.
Tail Docking
Docking of dogs’ tails is now generally illegal, although there are limited exceptions for working dogs. The docking can only be carried out by a qualified veterinary surgeon, within 5 days of birth, it having been certified in writing that the puppy is to be used (for example) in connection with lawful pest control or shooting. There are detailed requirements as to the breed of dog, the certification and the timing, (contained in the Docking of Working Dog’s Tails Regulations 2007) which must all be accurately dealt with. The dog must also be certified as micro-chipped within 3 months. An offence will be committed if the rules are not followed to the letter.

Investigatory Powers
The police are primarily responsible for the investigation of criminal offences, but where wildlife and animal welfare are concerned other bodies are likely to be involved. Both the W&CA and the AWA allow certain powers to be exercised by a police constable or by “an inspector” appointed by DEFRA or the local authority. This does not include RSPCA or RSPB officers, who will need the police to act for them.

Police officers have wide powers where they have reasonable grounds to suspect an offence. These include powers to stop and search, enter premises, seize evidence and make arrests. Generally, even the police need a warrant to enter premises used as a dwelling (i.e. a home) without consent, unless it is to make an arrest (for more serious, “indictable”, offences) or where a person is already under arrest.

The powers of other investigators are more limited. A Wildlife Inspector may enter premises other than a dwelling, taking a veterinary surgeon with him if necessary, only for the purposes of investigating an offence under the W&CA. Similarly, an Animal Welfare Inspector who has reason to believe that an animal to which the AWA applies is suffering or likely to suffer, may also enter premises other than a dwelling. The inspector must, if asked, produce evidence of his authority. To search a dwelling, a warrant must be obtained (unless consent is given), and if that happens generally the police will be in attendance.

To obstruct a police officer or an appointed inspector, acting lawfully in the execution of his duty, is an offence.

Time Limits and Penalties
For offences under the W&CA and other wildlife legislation the usual time limit within which to bring a prosecution is 2 years and under the AWA it is 3 years (although, in all cases, it must be no later than 6 months after the date on which the prosecutor has all the necessary evidence.)

On conviction, most of the offences carry possible imprisonment of up to 6 months and/or substantial fines (up to £5,000 for each wildlife offence, or for each bird, egg, nest or animal, and up to £20,000 in cases of cruelty under the AWA). The court may also order a convicted person to pay all or a substantial part of the prosecution costs. For AWA offences, disqualification orders can be made, preventing the offender from owning or keeping animals.
Sometimes the court will have a power to order forfeiture of vehicles, animals, weapons or anything else used to commit the offence, or to cancel a firearm or shotgun certificate (e.g. s.13 of the Deer Act 1991). If the court does not cancel it, the police are very likely to anyway.

**PEST CONTROL**

**General Licences**

Natural England issues a number of General Licences each year, which allow certain activities to be carried out that would otherwise be illegal. Where such a licence has been issued, there is no need to apply in order to rely on it.

General Licences are issued for a range of activities, and the full set can be found on the Natural England website. Two of these are of particular relevance to gamekeepers in controlling pest birds:

- **GEN-L04** – the *prevention* licence, which may be used for the purpose of preventing serious damage to livestock, crops, foodstuffs for livestock etc. and the spread of disease.
- **GEN-L06** - the *conservation* licence, which may be used for the purpose of conserving wild birds and flora and fauna.

The General Licences can be relied on by landowners, occupiers or others acting with their permission. They may be used only for the purpose specified and the terms and conditions must be strictly complied with, otherwise an offence is committed.

The General Licences allow the killing or taking of specified wild birds and the taking and destruction of eggs. Both licences apply to crow, lesser black-backed gull, jackdaw, jay, magpie, feral pigeon, rook, Canada goose and, now, monk parakeet and ring-necked parakeet. Only the prevention licence includes collared dove and woodpigeon. Only the conservation licence includes Egyptian goose.

Shooting with a semi-automatic weapon is specifically permitted (shooting with a standard weapon, is obviously also allowed although not mentioned in the licences, because shooting per se is not generally banned under the W&CA). Other permitted methods include cage traps, nets and, for feral pigeon only, lamps, night sights, mirrors and other dazzling devices. Anyone relying on a General Licence must be satisfied that non-lethal methods of control, such as scaring and proofing, are ineffective or impracticable. That is a matter of personal judgment based on pest control experience and there is no obligation to have tried non-lethal methods first.

General Licences are usually issued annually, on 1 January each year, and anyone relying on them should keep abreast of any changes, in particular to the species which may be controlled.

There have been no changes of relevance in 2014.
Significant changes that have been made in recent years include:

- the removal of sparrows and starlings;
- the addition of Canada geese (which applies in the close season);
- the removal of great black-backed gulls and herring gulls;
- the addition of parakeets and, to the conservation licence, Egyptian geese.

NB: The conditions state that the licence may not be relied upon by anyone convicted after 1 January 2010 of a wildlife or animal welfare offence, until the conviction becomes spent (in most cases, 5 years or more!).

Since herring gulls and greater black-backed gulls have been removed, anyone wanting to kill gulls or destroy their nests or eggs must apply to Natural England for an Individual Licence. Following representations from BASC and the NGO, Natural England have made available a specific form which can be downloaded from their website, where it is necessary to control gulls for the purposes of conservation.

The destruction of herring gulls’ nests and eggs may still be carried out under General Licence GEN–L05, where this is for the purpose of preserving public health or safety. This has been retained by Natural England to address the problem of aggressive behaviour from urban gulls during the breeding season.

NB: It is unclear whether the General Licences apply to hooded crows. The species is mainly found in Scotland, Northern Ireland and the Isle of Man but sometimes in the North and East of England. They share the same habitat and freely interbreed with carrion crows. The word “crow” has always been interpreted to include both species, but in late 2011 Natural England gave notice that they intended to change the wording to exclude hooded crow.

Following objections, the wording was left unchanged, pending further discussion. Natural England have indicated their view, however, that, as they currently stand, “the general licences do not permit hooded crows to be controlled in England”.

Crow Traps
Where birds may be controlled by cage trapping, this must done in full compliance with the terms and conditions of the General Licence.

Only crow, jackdaw, jay, magpie and rook may be used as decoy birds, which must be provided with adequate food, water, shelter and a suitable perch, in order to comply with the AWA.

Every cage trap must be inspected at least once a day AND AT INTERVALS OF NO MORE THAN 24 HOURS (which in practice means twice a day), and any non-target animals/birds released immediately upon discovery, or, if dead, removed. Where not in use, it must be rendered incapable and any bait, food, water or decoy birds removed.

Larsen Mate clam traps have been the subject of some controversy in Scotland as to their legality, and are now subject to the requirement that they must only be baited with eggs or
bread. No such restriction applies in England, but adopting a similar practice will avoid any suggestion they are being targeted improperly. (The same applies to Larsen pod traps).

**Mammal Cage Traps (live catchers)**

These may be used for all non-protected species (e.g. grey squirrel, stoat, weasel, fox, rabbit, rat).

Once trapped, the Animal Welfare Act 2006 applies, so traps must be checked regularly, at least once a day (preferably in the morning and ideally twice). Trapped animals must be humanely destroyed. All protected species must be released unharmed. (It is illegal to release grey squirrel or mink).

**Spring Traps**

Under s.8 of the Pests Act 1954, it is an offence to use any spring trap of a type or in circumstances which are not approved.

Approved traps are those listed in the Spring Traps Approval (England) Order 2012. This specifies by make and type the traps that may be used, for which animals and under what circumstances.

The most common approved traps are the various Fenn traps used for killing grey squirrels, rabbits, stoats, weasels and rats. All (except the Aldrich trap) must be set in a natural or artificial tunnel suitable for the purpose. For some, e.g. the Fuller trap, it must be the housing provided by the manufacturer, and for others. e.g. the DOC traps, it must be an artificial tunnel constructed to the design specified by the Department of Conservation. Other traps are approved provided that they are “equivalent in all respects” to those listed.

In all cases: “so far as is practicable without unreasonably compromising its use for killing or taking target species, the trap must be used in a manner that minimises the likelihood of its killing, taking or injuring non-target species”.

Break-back traps commonly used for rats, mice and other “small ground vermin” (which excludes species listed in schedules 5 and 6 W&CA), and spring traps of the kind commonly used for catching moles in their runs are excluded from the general prohibition.

Spring traps set for the purpose of catching any hare or rabbit, or so placed as to be likely to do so, must be inspected at least once every day between sunrise and sunset (s.10 Protection of Animals Act 1911.)

**Snares**

Snares (other than self-locking snares) may be used for controlling wild animals EXCEPT those listed in schedule 6 W&CA. They are used most commonly in fox and rabbit control but other target species that can legally be snared include rats, grey squirrel and mink.

Snares must be inspected at least once every day (s.11(3) W&CA), and a failure to do so could be punished by imprisonment of up to 6 months.
DEFRA has produced a Code of Practice on the use of snares in fox and rabbit Control. This is not a statutory code (unlike those made under the AWA), but it is a very useful document, which provides much useful guidance and lays down “best practice.”

The Code includes the following points:

- Before using snares or other capture/control methods, an assessment should be made to determine (a) whether the need (e.g. regarding damage or the threat of damage) is sufficient to warrant action being taken, and (b) the most appropriate method to use, taking into account the possible welfare impact on target animals and any risks to non-target species, and steps should be taken to minimise these risks.
- If snares are to be used to capture foxes or rabbits or other species for control or other reasons then this should be done using ‘best practice’.
- Every effort must be made to avoid the capture of non-target and protected species.

Adherence to the Code of Practice will ensure that snares are used to high standards and within the law.

Dogs

Under the Hunting Act 2004, it is an offence to hunt a wild mammal with a dog, unless the hunting is “exempt” (s.1). The offence is punishable by a fine of up to £5,000, but in addition it could lead to forfeiture of any dog, vehicle or other article used.

The exemptions are set out in Schedule 1 of the Act, a number of which are relevant to pest control:

- Stalking and flushing out
- Use of a dog below ground to protect birds for shooting
- Hunting of rats
- Hunting of rabbits.

Before using any of the exemptions, the permission of the occupier of the land must be obtained. For the hunting of rats and rabbits there are no other conditions, but for stalking and flushing out and use of a dog below ground the conditions are numerous and complicated. Any breach will mean the hunting is not exempt and could lead to prosecution.

Stalking and flushing out must be for preventing or reducing serious damage to livestock, game birds or wild birds, food for livestock, crops, other property or the biological diversity of an area. No more than two dogs may be used, and reasonable steps must be taken to ensure the mammal is shot dead by a competent person as soon as possible. The dogs must be kept under sufficiently close control so as not to prevent or obstruct this.

The use of a dog below ground (“the gamekeepers’ exemption”) must be for preventing or reducing damage to “game birds or wild birds being kept or preserved for shooting”. The person using the dog must have with him written evidence that the land belongs to him or
that he has the appropriate permission, to be made immediately available for inspection should the police ask for it. Only one dog may be used below ground at any one time. Reasonable steps must be taken to ensure that the mammal is flushed out and shot dead by a competent person as soon as possible. The dog must be under sufficiently close control and reasonable steps must also be taken to prevent it being injured. Use must also comply with the BASC Code of Practice, which includes the following principles:

- The terrier’s role must be to locate the wild mammal and cause it to bolt.
- Only “soft” terriers must be used (i.e. those that stand off and bark rather than fight).
- Care must be taken to ensure safety and minimise risk of injury to dog or wild mammal during the bolting process.
- The terrier’s time underground must be kept as short as possible.
- The terrier used must always be fitted with an electronic tracker.
- As soon as it is determined that a terrier is trapped assistance must be given to release it.

Annexed to the Code is a Good Practice Guide, breach of which is not of itself an offence but could be relied upon to negative or establish liability. Points to note include that the law does not allow a terrier to be used to despatch orphaned cubs, and where a dog becomes trapped underground, any digging down must be solely for the purpose of rescuing it.

Also annexed to the Code is a draft “permission” form.

Pesticides
The law recognises pesticides as a legitimate form of control for certain pest insects and other animals. Section 8(b) Protection of Animals Act 1911 makes it an offence to place on any land or in any building, any poison or fluid or edible matter which has been rendered poisonous. However, it is not an offence if the poison is placed for the purposes of destroying insects and other invertebrates, rats, mice, or other small ground vermin, where necessary in the interests of public health, agriculture, or the preservation of other animals, domestic or wild, and that all reasonable precautions are taken to prevent injury to dogs, cats, fowls or other domestic animals or wild birds.

The regulation of pesticides is complicated. Non-agricultural pesticides, including rodenticides, are currently regulated under the Control of Pesticides Regulations 1986 (COPR). In due course, regulation will be transferred to the Biocides Product Regulations which implement a European-wide scheme.

Under COPR:

- Only approved pesticides can be used, and these must be used and stored according to the product instructions. Full details of which pesticides are approved and subject to what conditions can be found on the COPR databases on the HSE website.
- There is a duty on any person who stores or uses any pesticide to take all reasonable precautions to protect the health of human beings, creatures and plants.
• An employer must ensure that employees who are required to use pesticides (including common rodenticides) are provided with such instruction, training and guidance as is necessary with regard to their use and storage.
• Breach of the regulations is an offence for which the offender may be fined.

Poisoning wild birds or protected mammals, or possession of poisons for the purpose of such use, are serious offences under the W&CA, punishable with imprisonment. Possession per se is not an offence under the Act, but it is unlikely a gamekeeper could put forward any legitimate reason for being found with poisons such as Carbofuran, Alphachloralose or Bendiocarb.

Section 43 of the Natural Environment and Rural Communities Act 2006 was intended to make it easier to convict and imprison those suspected of illegal poisoning, by criminalising simple possession of certain pesticides, but no order has yet been made in England and Wales detailing what substances this applies to.

**Gassing**

Gassing is considered to be the most effective method of reducing rabbit numbers where burrows are accessible. Fumigants must be approved under the Control of Pesticides Regulations 1986 and used according to the label. The only available formulations generate phosphate gas on contact with moisture, available in either tablet or pellet form. (NB: the use, storage or supply of Cymag is now illegal).

**Rodenator**

Devices of this type were first developed in the United States in the 1990s to control a wide range of burrowing mammals and in recent years have been imported into the UK to deal with rabbits, rats and moles. They inject an explosive mixture of propane gas and oxygen into a tunnel system which is then electronically ignited, collapsing the burrow and killing any animals that are present.

The use of any explosive other than firearm ammunition for the purpose of killing or taking any wild animal is prohibited under the W&CA.

Rodenator use to collapse burrows of rats, rabbits and other mammals would not be unlawful, provided that the operator has taken all reasonable means to ensure that no animals are inadvertently killed whilst using the device (i.e. to clear the burrow beforehand). Natural England have expressed concerns and issued guidance on how to keep within the law. Operators will need to make their own assessment and only proceed with collapsing burrows when satisfied that this has been done to a satisfactory standard.

**NB:** Rodenator must NOT be used to collapse badger setts, or where it might affect the habitat or resting place of any protected animals or other protected habitats or sites.

**INVESTIGATIONS AND SEARCHES**

This can start with a rumour passed to the police or other organisation suspicious of gamekeepers’ actions. It may originate from a false or malicious report from a disgruntled employee, a neighbour or a member of the public passing through. Once a complaint is
made this is likely to result in some form of investigation. It may be, for example, the arrival of a local policeman or RSPCA officer asking questions, or covert observations or other forms of surveillance, by the police or the RSPB, with or without lawful authority.

If approached about “a little matter that just needs to be cleared up”, such approaches should be treated with caution. Generally, the least said the better, and the most prudent course is to keep any conversation as short as possible. A policeman or other investigator will make near-contemporaneous notes of what he claims was said once he is out of sight. Do the same and report the details to the head keeper or the estate manager.

**Police Raids**

One can rarely predict when a raid might happen, so always be prepared:

- Never leave anything around which might be regarded with suspicion such as carcases, rat poison
- Check your traps and snares daily as required to make sure they remain fully compliant
- Keep kennels clean and don’t allow sick/injured animals to go untreated
- Take proper care at all time of your guns and ammunition
- Ensure chemicals and veterinary medicines are properly stored and documented
- Be suspicious of any strangers on the land - tell your head-keeper or employer
- Do not give an interview or make any statement to anyone, especially after being cautioned, without having obtained specialist legal advice.

When a raid happens, this will usually be on the authority of a warrant, a copy of which should be made available on request. The warrant only gives the persons named on it the powers shown. It will usually authorise police officers to enter and search premises for evidence in relation to specified offences. It will often allow for a number of others to attend with the police, such as RSPB officers. It is not necessary for these others to be identified by name, but the warrant will usually indicate how many others (e.g. RSPB officers) are authorised to be present. Anyone authorised, on a search warrant, to accompany a constable executing that warrant has the same powers as the constable in relation to executing the warrant and the seizure of anything to which the warrant relates, but he may only exercise these powers under the supervision of the constable himself. Ask for a copy of the warrant and read it.

If there is no warrant, only the police and, where statutory powers provide, official inspectors (e.g. officers from the local authority, DEFRA or Natural England, but NOT the RSPCA or RSPB) may enter land or premises other than a dwelling. To enter a home, a warrant will always be required.

Telephone your manager or employer as soon as possible. Failing which, telephone a solicitor. You should decline to answer questions and volunteer nothing until you have taken advice from a solicitor.
Obtain as much information from the visitors as you can. Make a note of how many attend, descriptions, and badge numbers. Make sure you keep your copy of the warrant (or make a note of what it says). There is a right to ask for an independent person to be present to witness the search. The officer in charge may refuse if he reasonably believes that this would hinder the investigation or cause unreasonable delay. It is a good idea to have someone nearby who would make a good witness and is willing to attend in the event of a raid.

In all your dealings with the police remain calm and polite. If you think that they are acting beyond their powers or outside the scope of the warrant, ask them to explain on what authority they are acting. Do not argue with them, and certainly do not seek to obstruct them even if you are unsure whether they are acting lawfully. Obstructing a police officer in the execution of his duty is an offence. You should agree nothing and sign nothing, however, without a solicitor being present.

If arrested and taken to the police station, no questions should be asked about the suspected offence until the formal interview, on tape, at the police station. Avoid engaging in conversation with the police on the way there. It is likely to be very unclear what information they may have been provided with, and there is a risk that seemingly harmless details could be used in conjunction with other evidence, whether well-founded or not, to bolster a case which might otherwise be weak or non-existent.

**At the Police Station**
For anyone under arrest at a police station the procedure will be the same. This is laid down by the Police and Criminal Evidence Act 1984 (“PACE”) and Codes of Practice.

On arrival at the police station you will be presented to the custody sergeant, who is responsible for the welfare of those in custody. He will be told by the arresting officer what you have been arrested for and why. This will almost certainly be to formally interview you in order to obtain evidence. You should be asked no questions about the suspected offence prior to the formal interview.

You will be allowed one telephone call to your employer/wife/colleague, to inform them where you are. You are also entitled to speak to a solicitor on the telephone and who can attend the police station to act for you. If no solicitor has been arranged already, and your preferred solicitor is not contactable, you should be offered the duty solicitor. A duty solicitor is unlikely to know much about shoots and gamekeepers’ work, but is better than no solicitor at all. He will be a local solicitor in private practice who is completely independent of the police.

When first arrested, and at the commencement of an interview, you will be cautioned in the following terms: “You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.” The police will emphasise the disadvantages of not answering questions, but the safest course, particularly if unrepresented, is often to say nothing.
In most cases, a suspect can only be held at the police station for up to 24 hours and only with good reason. The police will then have to release him without charge, bail him to return to the police station on another day or charge him. If charged, it is likely that you would be given a date and time at which you must attend court and released on bail.

Where released without charge it does not necessarily mean that is the end of the matter, a prosecution could be commenced by means of a summons at a later date. It is possible, also, that a further raid could take place.

After release, it is a good idea to make detailed notes of what happened at the police station as soon as possible whilst matters are still fresh in the memory, so that an accurate account can be provided to your manager, employer and/or solicitor.

**SABOTEURS AND OTHERS**

Wherever shooting takes place, there is potential for problems from people who may have different interests, hold opposing views or misunderstand what is happening. These include not just committed animal rights activists, but anyone else who is on the land without lawful authority. These could be dog-walkers, birdwatchers, members of local badger watch groups, as well as RSPB and RSPCA officers.

None of these have any rights on private land where there is no legal access. In these cases it is the keeper who should be asking questions: “who are you?”, “can I help you?”, “what do you want?”, “are you aware that this is private land and not open to the public?” He should obtain information, not provide it.

**Saboteurs**

Sometimes saboteurs might have attended prior to the shoot and by various means driven off the birds. The absence of birds might mean that saboteurs are in the vicinity but they may well have moved on. Rook scarers (fireworks) may have been left burning on an hour-long fuse that will set off explosions every few minutes.

The appearance of saboteurs during a shoot is particularly difficult as they will be intent on stopping the shooting, and an accidental shooting, of someone in the line or one of the beaters, due to the saboteurs’ actions would be disastrous. Briefing the shots before saboteurs appear as a matter of precaution is advisable, so that instructions to stop and unload will be better understood and followed immediately.

Whenever saboteurs are present, securing guns, ammunition, dogs and vehicles is of the utmost importance. Loss of or damage to any of these will be a problem, which is what the saboteurs want.

Typical offences committed by saboteurs include criminal damage to vehicles, cage traps etc., public order offences (i.e. verbal abuse and/or threats) and assaults.

There are two other offences that may be encountered in the country sports context, which the police are often inclined to overlook:
Harassment, under the Protection of Harassment Act 1997, where conduct is repeated on a number of separate occasions over a period of time. This might include name calling, intrusive videoing or persistent following of keepers going about their routine business.

Aggravated trespass, under section 68 of the Criminal Justice and Public Order Act 1994, where a person enters private land without authority and engages in conduct intended to deter through intimidation, disrupt or obstruct a lawful activity. Failing to leave when directed by the police, or returning within 3 months, is also an offence.

Aggravated trespass, is only committed where persons engaging or about to engage in the lawful activity are physically present on the land at the time of the trespass. It would not include, for example, pre-beating a shoot to rid an area of pheasants before the guns arrive. The offence also depends on the activity itself being “lawful”. In 2008 a prosecution involving saboteurs at a shoot in Lancashire collapsed because a health and safety risk assessment had not been carried out.

Whenever an offence has been committed, or there is a risk of a breach of the peace (i.e. actual violence) the police should be called. Identifying the location will be essential as the police attending may not know the area. Ideally, an Ordnance Survey co-ordinate (longitude and latitude) should be provided.

**Citizen’s Arrest**
If it is not possible to wait for the police then in certain circumstances there is a power available to every member of the public to make a citizen’s arrest.

Under s.24A of the Police and Criminal Evidence Act 2004, anyone may arrest a person whom there are reasonable grounds to suspect is committing or has committed an *indictable* offences.

Not all offences are indictable, only those that could be dealt with at a Crown Court, such as thefts, assaults where injuries are caused and criminal damage valued at £5,000 or more. For verbal abuse, minor assaults where there is no injury and minor criminal damage the power is not available.

The power may only be exercised where it is necessary to prevent physical injury, loss or damage to property or making off before the police arrive and where it is not reasonably practicable for the police to make the arrest.

Any citizen may also arrest at common law where: (a) a breach of the peace has occurred in the presence of the person making the arrest or (b) the arrestor reasonably believes that such a breach will be committed in the immediate future by the person arrested or (c) a breach has been committed and it is reasonably believed that a renewal of it is threatened.

In making a citizen’s arrest only reasonable force may be used. Excessive force could lead to prosecution for assault, as well as a claim for damages for trespass to the person and false imprisonment. The police and the courts do not like the use of self-help measures. Any use
of force must always be reasonable, and self-help is best regarded as a measure of last resort.

**Removal of Trespassers**

Trespassing itself is not a criminal matter, and where no offence has yet been committed and there are insufficient grounds to believe there will be a breach of the peace the police are often unwilling to assist. In that case, the exercise of common law powers may be the only option.

If a trespasser peaceably enters or is on land, the landholder - the person who is in or entitled to possession - may request him to leave and if he refuses the landholder or his representative may remove him from the land using no more force than is reasonably necessary. If a trespasser enters with a threat or use of force the landholder may remove him without a previous request to depart. As with the citizen’s arrest, the use of such common law powers requires great care, as if the force used in turning out a trespasser is excessive, then this will amount to trespass upon the person of the trespasser, as well as a criminal assault.

**POACHERS**

**Offences**

Wild birds and animals do not belong to anyone while they are alive and cannot generally be the subject of offences of criminal damage or theft. (This will be different if they are “owned”, for example farmed deer on enclosed land or reared pheasants before they are released).

Where hunting or shooting takes place on land without permission, it is likely to be a poaching offence. This depends, rather confusingly, on the particular quarry and whether the activity occurs during the day or at night.

**Day poaching** – s.30 Game Act 1831 – “if any person shall commit any trespass by entering or being in the daytime upon any land in search or pursuit of game, woodcocks, snipes or conies”.

**Night poaching** – s.1 Night Poaching Act 1828 – “if any person shall by night, unlawfully take or destroy any game or rabbits in any land, whether open or enclosed, or shall by night unlawfully enter or be in any land, whether open or enclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game…” (This was extended by the Night Poaching Act 1844 to include offences committed on public roads and footpaths, to prevent poachers claiming that any game found on them was taken on the public highway).

(“Game” is not identical in the two Acts, but in both includes hares, pheasants, partridges, grouse, heath or moor game and black game.)

The offences are punishable only by a fine, of up to £1,000, unless there are multiple offenders. If there are 3 or more poachers together at night, and any of them are armed
with a gun, crossbow or other weapon, then the available punishment is increased to a maximum of 6 months imprisonment and/or a fine of £2,500. If there are 5 or more poachers during the day, then the maximum punishment is a fine of £2,500.

Poaching of deer, which includes, not only actual hunting, but also entering land as a trespasser with the intention of hunting or removing deer carcases without permission, is an offence under section 1 of the Deer Act 1991, punishable on conviction by up to 3 months imprisonment and/or £2,500 fine.

Illegal hunting with dogs – if a dog is being used then there might also be an offence under s.1 of the Hunting Act 2004. In addition to a fine of up to £5,000 a court may order the forfeiture of any dog, article or vehicle used.

Police Response
The police are often unaware of the law relating to poaching and tend to view it as low priority. Unless there are particular aggravating circumstances, it is very unlikely that they will respond immediately to a telephone call, particularly to attend a remote location on a cold winter’s night. Recent figures for deer poaching have revealed a sharp increase in recent years. Some forces have launched “crackdowns”, but their focus is likely to remain on organised criminals targeting meat to sell on the black market.

Keepers’ Powers
Preventing poaching is likely to be written in to the terms of a gamekeeper’s employment. What can be done in any given case may well be limited and will depend very much on the circumstances.

Where poachers are caught in the act, gamekeepers are entitled to arrest them. Where the offence is at night, s.2 Night Poaching Act 1828, provides a power of arrest to the owner or occupier of the land, or his gamekeeper or servant. The offender can be apprehended on the land where the offence was committed, or anywhere that he has fled to following a pursuit.

For daytime poaching, there is a similar power under s.31 Game Act 1831, but it is more limited: the poacher must first be told to leave the land and to provide his name and address. If he refuses or provides details that are “illusory”, then a gamekeeper (or any other person acting on the authority of the person with the game rights or of the occupier of the land) can apprehend him, to be taken before a magistrate within 12 hours. In practice, in either case, the offender should be taken to the nearest police station as soon as possible, or, if the police are attending, detained at the scene pending their arrival.

There is a power to confiscate, for the benefit of the person entitled, any recently killed game (but this does not include rabbits), whether found on a poacher at night or by day (s.36 of the Game Act 1831). At one time, a gamekeeper could also take, “for the use of the lord or steward of the manor”, any “dogs, nets and other engines or instruments for the killing or taking of game” being used illegally for want of a game certificate. Since game licences were abolished in 2007, it is unlikely that this particular right (which did not extend to keeping guns) has survived.
Where deer are concerned, anyone authorised by the owner or occupier (which in most cases would include a keeper) may require the poacher to give his full name and address and quit the land forthwith (section 1 (4) of the Deer Act 1991).

Whilst there is no power to seize guns or articles used in poaching, a keeper would not be acting criminally in seizing such items (or rabbits!) intending to hand them into the police (technically this could be a civil trespass to goods giving rise to liability in the event of any loss or damage). The poacher should be clearly told what is intended, and the items should be handed to the police as soon as possible, to avoid any suggestion of theft.

The keeper’s personal safety must be paramount, and in many cases the only sensible course is to call the police, and gather evidence to assist in subsequently identifying and apprehending the offenders: numbers and descriptions of individuals, dogs and vehicles, vehicle registration numbers etc. Photographs or video footage should be taken if possible.

If the poachers have firearms, do not seek to confront them and be very cautious about approaching them at all. Definitely do NOT approach holding a firearm, as this could well be misinterpreted. An allegation, of threatening behaviour, whether unfounded or not, could have disastrous consequences. Clearly a gun must never be discharged towards (or in the presence of) poachers or their vehicles.

**FIREARMS**

**The Legal Framework**

The law and procedures relating to the possession and licensing of firearms, shotguns and ammunition are extremely complex, governed by 34 separate pieces of legislation, including the Firearms Act 1968 and various Firearms (Amendment) Acts, together with the Firearms Rules 1998.

It need hardly be said that the courts and police take a very serious view of any breaches of the law affecting the possession and use of firearms. Except for minor technicalities, offences usually lead to imprisonment, even for first time offenders (and in some cases mandatory minimum sentences of five-years apply, other than in exceptional circumstances).

**Licensing**

A firearm certificate is generally required to possess firearms and firearm ammunition, and a shotgun certificate is required if you wish to possess shotguns. A “shotgun” is defined as being a smooth bore gun with a barrel at least 24” long and no more than 2” diameter, with either no magazine or a non-detachable magazine incapable of holding more than two cartridges. Any other shotgun, e.g. a semi-automatic with a detachable magazine or a fixed magazine capable of holding more than two cartridges, is classed as a section 1 firearm.

A shotgun certificate is not required to possess or acquire most types of shotgun cartridges (anything containing five or more shot, none of which exceeds .36 inch in diameter). All single bulleted shotgun ammunition, for example solid slug, requires a firearm certificate.
Obtaining a shotgun certificate is easier than obtaining a firearm certificate. For either the police will need to be satisfied you can be permitted to possess firearms or shotguns without danger to the public safety or the peace.

A shotgun certificate should be granted unless the police are satisfied the applicant does not have a good reason for possessing one; and an applicant should be regarded as having good reason if the shotgun is intended to be used for sporting or competition purposes or for shooting vermin (s.28(1)(B) of the 1968 Act).

For a firearm certificate, the applicant must satisfy the police he has a good reason for having a firearm and that he is fit to be entrusted with one.

A good reason could be:

- Quarry shooting including vermin and other shooting over land
- Target shooting
- Humane dispatch of sick or injured animals
- Slaughtering of animals for human consumption (a captive-bolt instrument which is not classified as a firearm is commonly used for this purpose, but a free-bullet slaughtering instrument will require authorization)

A shotgun certificate authorises a person to have in their possession or to acquire an unlimited number of shotguns, whereas a firearm certificate covers only those firearms specified (for each of which the applicant will need to demonstrate good reason).

**Home Office Guidance**

In October 2013 the Home Office published its “Guide on Firearms Licensing Law”, a substantial document, over 250 pages, which replaced the previous guidance to police, last updated in 2002. The aim has been to make guidance on firearms licensing “as clear and concise as possible for the police, the shooting community and the general public.” It sets out the law and procedures and gives a very good indication of the approach the police will take to any given situation. Updated in December 2013, it is available on line at: https://www.gov.uk/government/publications/firearms-law-guidance-to-the-police-2012

By and large, the changes to the previous guidance are matters of detail, although there are two particular developments worth noting:

The first relates to the additional conditions that may be attached to Firearm certificates. The aim has been to reduce bureaucracy by encouraging the police to ensure that conditions are kept to the minimum, are consistent with each other and cover all good reasons for which a firearm is possessed. The Guide makes it clear that once a good reason for possession is established, for instance stalking, it is unnecessary to show good reason for the inclusion of conditions covering other lawful use, such as target shooting. In particular, conditions should provide flexibility with quarry shooting by allowing for “all lawful quarry” to be shot.
The second, is to be found in Chapter 12, “Assessing Suitability”. Previously, Chapter 12 dealt solely with section 1 firearms and the “fitness” test. It now includes suitability to possess a shotgun. Some of the factors the police will consider are: previous convictions or cautions, arrests, call-outs or bindings over in relation to any activity which involves the use of a firearm, or offences involving violence, dishonesty or a disregard for public safety, intemperate habits, such as evidence of alcohol or drug abuse, aggressive or anti-social behaviour etc. Much greater emphasis is now to be placed on domestic violence: guidance which previously merited a single line now extends to three pages and any suggestion of problems at home could lead to revocation.

Application Procedure

A new single application form for applying for firearms and shotgun certificates came into use on 1 December 2013. It follows a similar format to the old separate forms, and the only obvious advantage is that those with coterminous certificates need only submit a total of 4 photographs.

The Rehabilitation of Offenders Act 1974 does not apply, and an applicant is therefore not entitled to withhold information about a previous conviction on the grounds it is “spent”. All convictions other than parking fines and fixed penalty notices should be disclosed, including motoring offences, binding overs, formal written warnings, cautions and convictions received outside Great Britain.

Similarly, any relevant medical condition should be disclosed, and the form requires an applicant to provide their GP’s details and consent to the police contacting him or her. In any case where the police have concerns, they will make enquiries with the doctor and ask for a medical report. Increasingly, the grant or renewal of a certificate is being refused if the applicant has any history of depression or mental illness. The fact that someone suffered briefly from mild or even severe depression in the past does not necessarily mean they cannot now be entrusted with firearms or shotguns without danger to the public safety or the peace, and consideration should be given to challenging such a decision, if necessary through the courts.

Certificates are normally issued for a period of five years. Where coterminous certificates are applied for a reduced fee will be payable, to reflect the saving to the police in processing both at the same time.

The police can take several weeks or longer to process applications. Although they will normally issue reminder letters around two months before expiry, it is the holder’s responsibility to apply in good time. If the new certificate has not been received by the expiry date the guns should be placed in storage with a dealer to avoid being in unlawful possession. Similarly, it would be unlawful to continue to hold any section 1 ammunition.

Upon renewal of a certificate, the holder should make sure that each gun he has is properly described on it, with its make, model and number accurately printed and that the police officer checks this with each weapon. He should ensure that the amount and description of rifle ammunition that the certificate allows is not exceeded in practice and that, by the purchases as shown in the certificate, he can prove that he actually uses the weapons.
Where years pass without any rifle ammunition being bought, police may say that the holder has no good reason for retaining his rifles as he does not appear to have used them.

**Revocation**

Once a firearm or shotgun certificate has been granted, the police have a power to revoke, and are likely do so if they have any cause for concern about the holder’s suitability. Events which might seem totally unconnected but which can nonetheless trigger the sudden revocation of a certificate include minor public order incidents, matrimonial disputes and drink driving (especially if repeated).

Other circumstances which can lead to the police revoking or refusing to renew include:

- Failing to abide by the conditions on the certificate relating to the use or storage of firearms, shotguns and ammunition, or a failure to notify the police promptly of any permanent change of address.
- Failing to notify the police within seven days of the theft, loss or destruction of the certificate itself or any firearm, shotgun or ammunition to which the certificate relates, or the acquisition, sale or disposal of any firearm. Both parties to the transaction must inform the police. (The loan of a shotgun to another shotgun certificate holder for up to 72 hours does not need to be notified).
- Exceeding section 1 ammunition limits. Every firearm certificate will specify the amount of ammunition of each calibre the holder may possess and acquire at any one time. There is no limit on amounts of shotgun ammunition.

**Appeals**

Where the police refuse to grant, renew or vary a certificate or revoke a certificate, there is a right of appeal to the Crown Court. Notice of Appeal must be lodged with the Court and served on the Chief Officer of Police within 21 days of receiving notice of the decision.

The Judge will decide the case on its merits at the date it is heard and is not limited to reviewing whether the police decision was right or wrong. He can consider evidence that might not have been available to the police, such as statements from character witnesses.

If the appellant loses it is very likely he will be ordered to pay the legal costs of the police, but if he wins it is unlikely the police will have to pay his legal costs. This is because the courts have consistently stated that the possession of guns is a privilege not a right, and the police have a duty to take sometimes difficult decisions to protect the public. It is only if they can be shown to have acted with impropriety or completely unreasonably that costs would be awarded against them. For any gamekeeper, insurance cover for legal fees in the event an appeal is necessary is a sensible precaution.

**Surrender and Seizure**

Once a decision is taken to revoke or not renew a firearm or shotgun certificate, the police are entitled to require the holder to surrender forthwith his certificate, and any guns or ammunition in his possession. It is not uncommon for the police to turn up without warning to seize the guns and ammunition, and if that happens, the only sensible advice is to co-operate.
The police should retain any seized guns or ammunition until it is clear whether or not an appeal is to be pursued, and, if so, the outcome of that appeal. If the police subsequently dispose of, i.e. sell, seized guns and ammunition, this is likely to be at significantly below market value. It is therefore worth asking for them to be lodged with a firearms dealer, and if there is some advance warning of non-renewal, it would be sensible for the weapons and ammunition to be taken to the dealer beforehand to avoid them being seized at all.

Police forces now link reported and recorded incidents with their firearms database. This means that if the holder of a firearm or shotgun certificate is involved in an incident to which the police are called, he may well find his certificate is in jeopardy. Domestic disputes, allegations of criminal offences and drunkenness may all trigger this procedure and police may arrive at the person’s home (armed or otherwise) to seize his guns and ammunition. If entry is refused, the police would either have to obtain a warrant or make an arrest to allow them access to the home, but an arrest would probably be easy to justify and refusal to allow reasonable police requests would not be viewed favourably by a Court later on even though the person may technically be within his rights.

Prohibited Persons
S.21 of the 1968 Act provides that those sentenced to imprisonment (or detention in a young offender institution) for a period between 3 months and 3 years are prohibited from possessing firearms and ammunition in any circumstances for 5 years from the date of their release. Those sentenced to 3 years or more are prohibited for life. The prohibition covers not just firearms and firearms ammunition but also shotguns, cartridges, air weapons and air gun pellets.

Security and Storage
Firearms and shotguns “must be stored securely at all times so as to prevent, so far as is reasonably practicable, access to the guns by unauthorised persons”. The same applies to section 1 ammunition.

The only circumstances in which the above security requirements do not apply are when the guns or ammunition are in use or being cleaned, repaired or tested by the certificate holder, or in connection with its use, transfer or sale, or when the gun or ammunition is in transit in connection with any of these purposes.

In most cases the security of firearms, shotguns and ammunition in the home can be achieved by the use of cabinets specifically designed for that purpose. Cabinets should be attached securely to load bearing walls of the house and sited out of view, not only from outside the property, but also from visitors who enter the property. (Further information is provided in Chapter 19 of the Home Office Guidance).

Keys to any cabinet or security device should be kept secure and their location not disclosed to any unauthorised person, including family members. The same applies to the code to any combination locks. Allowing even a spouse or partner to know the whereabouts of keys and/or combinations is very likely to amount to a breach of the security condition. Not only
could this lead to revocation but it is also an offence. If unauthorised access to guns or ammunition is achieved, revocation and prosecution are likely.

**Ammunition**
As a matter of best practice, all section 1 ammunition should be kept secure and separate from the firearm i.e. in a separate cabinet or lockable compartment. (The same applies to easily removable component parts such as rifle bolts.)

Secure storage of shotgun cartridges is not required by law but it is recommended in the police guidance that they should be locked away for both security and safety, especially where there are children in the house.

**Transportation**
Any firearms should be hidden, preferably in the locked boot or other secure load carrying area. Vehicles which have to be left unattended for any length of time should ideally have an immobiliser and/or alarm fitted. Where practicable the bolt, magazine or other operating part should be separated from the firearm and either carried on the person or kept in a locked container, ideally secured to the vehicle or concealed elsewhere. Where possible ammunition should be stored separately and this too should be concealed from view. Where possible the vehicle should be parked within sight of the responsible person and in a position that would frustrate attempts to enter it unlawfully (e.g. with the boot close to a wall).

In estate vehicles etc. the lid or cover of the load carrying area should be in place, and if ammunition has to be stored there, it should be in a locked container ideally secured to the vehicle. Where a vehicle is regularly used to carry guns, a device should be fitted for securing the guns to the vehicle such as security cases, cage, cable or clamp.

**Overnight Accommodation**
If secure facilities for storage are provided, the certificate holder should satisfy himself that no unauthorised person has access, for example by having spare keys. Consider separating and retaining integral parts or using portable security devices such as security cords.

**Production of Certificates**
The Firearms Act 1968 requires a person in possession of a firearm/shotgun in a public place to show his certificate to a police officer who demands to see it or to show proof of not needing one. There is no notice to produce procedure as there is with driving licences. It may be wise to carry a photocopy whilst keeping the original at home as the loss of a certificate can be a serious matter.

**Component Parts and Sound Moderators**
For licensing purposes the term “firearm” is taken to include not only a complete rifle or other firearm but also any component part (any pressure bearing part of the weapon), and any removable accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon. Possession of a sound moderator without the requisite authority on a firearm certificate would constitute an offence. Sound moderators on shotguns are not considered to be component parts and so do not need authorisation.
**Borrowed Shotguns and Rifles**
The legislation allows for the possession and use of shotguns and of rifles and ammunition without needing to hold a certificate in certain circumstances.

Under s.11(5) of the 1968 Act a person who does not hold a shotgun certificate may borrow a shotgun from the occupier of private premises and use it on those premises in the occupier’s presence.

S.16(1) of the Firearms (Amendment) Act 1988 enables a person who does not hold a firearm certificate to borrow a rifle from the occupier of private premises and to use it on those premises in the presence of either the occupier or their servant. The occupier/servant must hold a firearm certificate in respect of the firearm being used, the borrower must be accompanied by the certificate holder, and the borrower’s possession and use must comply with any conditions as to those matters specified in the certificate. S.16(2) of the 1988 Act permits the borrower of the rifle to purchase or acquire ammunition for use in that rifle and to have the ammunition in his possession during the period for which the rifle is borrowed, subject again to compliance with the conditions on the certificate.

For shotguns it is the “occupier” who must be present whereas for rifles it may be either the “occupier” or “a servant of the occupier”. The term ‘occupier’ is not defined in the legislation, however the Home Office Guidance suggests that the definition given in s.27 of the Wildlife and Countryside Act 1981 should be adopted, which “in relation to any land other than the foreshore, includes any person having any right of hunting, shooting, fishing or taking game or fish on that land.” ‘Presence’ is normally taken to mean within sight and hearing.

There is a further exemption from the requirement to hold a certificate for gun bearers, under s.11(1) of the 1968 Act, which covers a person carrying a firearm or shotgun under the instruction of another person who holds a certificate and for that other person’s use for sporting purposes only. It does not entitle the bearer to use the firearm or shotgun. There is also an exemption for organised clay pigeon shoots, under s.11(6).

**Transfers**
The rules that govern transfers between certificate holders vary according to whether the gun in question is a section 1 firearm or a shotgun.

Any transfer of a section 1 firearm (or ammunition) must be to a registered firearms dealer or directly to a person authorised by a firearm certificate (or visitor’s permit) to take possession, and both parties must notify the police within seven days.

A shotgun may be lent by one certificate holder to another for a period up to 72 hours without notice, but, if longer, both parties must notify the police.

A notice must identify the firearm in question, state the nature of the transaction, give the name and address of the other party and should be sent by registered post, recorded
delivery or by email. A list of email addresses for these purposes is available on the BASC website.

**Young Persons**
The subject of minimum ages is complicated. Broadly speaking, a person must be 14 or over to have a firearm certificate, and a person under 18 is prohibited from purchasing or hiring any firearm or ammunition, including air weapons.

Some other points to note:

- A person under 15 shall not have an assembled shotgun with them unless supervised by a person aged 21 or over or when the shotgun is in a securely fastened gun cover so that it cannot be fired.
- A borrowed rifle on private premises may only be used by a person aged 17 or over. Where a borrowed rifle or shotgun is used by a person under 18, the occupier/servant must be 18 or older.
- A person under 18 may act as a gun bearer, but only if the person he is carrying for is over 18.
- A person under 18 may not have with them an air weapon or ammunition, unless supervised by someone over the age of 21.

**Air Weapons**
The Crime and Security Act 2010 created an offence of failing to take reasonable precautions to prevent a person under 18 from gaining unauthorised access to an air weapon. This was in response to several deaths. Compliance will best be achieved by treating air weapons as you would your other firearms and storing them in an existing gun cabinet (or a lockable cupboard).

**Public Places, Private Land, Highways and Alcohol.**
S.19 Firearms Act 1968 makes it an offence for a person, without lawful authority or reasonable excuse, to have with him in a public place, a loaded shotgun, an air weapon, whether loaded or not, or any other firearm together with ammunition for use in that firearm. The sentence can be up to 7 years imprisonment. The fact that the firearm is covered by a certificate will not of itself provide a defence. Compliance with the conditions on the certificate is imperative.

S.20(2) Firearms Act 1968 makes it an offence for a person, without reasonable excuse, to enter any land as a trespasser while he has any firearm (including an air weapon) in his possession. The sentence can be up to 3 months’ imprisonment. Having the permission of the landowner or occupier, before taking guns on to any land, is imperative.

S.161(2)(b) Highways Act 1980 makes it an offence to discharge a firearm within 50 feet of the centre of a highway, without lawful authority or excuse, in consequence of which a user of the highway is injured, interrupted or endangered. The offence, punishable by a fine of up to £1,000, does not apply to footpaths and bridleways.
S.12 Licensing Act 1872 makes it an offence to be drunk in possession of any loaded firearm, punishable by a fine or up to one month’s imprisonment. For these purposes, blood alcohol level is not the determinative factor; the question is whether the person can be shown to be drunk by means of his behaviour and general appearance of intoxication.

**KNIVES**

As with guns, the law with regard to knives has become increasingly strict in recent years, and unlawful possession can lead to up to 4 years in prison.

Some knives are considered by law to have no purpose other than as an offensive weapon (e.g. flick-knives, butterfly knives, non-ceremonial swords and daggers, bayonets). Under no circumstances should you have one with you at work or in any public place. To do so without reasonable excuse is an offence contrary to s.1 of the Prevention of Crime Act 1953.

Under s.139 of the Criminal Justice Act 1988, anyone who has with him any article with a blade or sharp point in a public place is committing an offence, unless he can show that he has a “good reason”. The only exception is a folding pocket knife with a blade of 3 inches or less, but NOT a lock-knife, i.e. one for which the blade locks in the extended position.

A “public place” is any place to which members of the public have access, even if this is on payment of an entrance fee. If something is locked inside your car, if this is on a public highway, a car park or forecourt, the law still regards it as being in a public place.

A “good reason” includes “for use at work”. For example, if you use a lock-knife for gutting game taken on a shoot or a Stanley knife for cutting bailer twine, then you have a good reason for having it whilst at work, or whilst travelling to or from work. If you still have it when you are on a day out with the family you would be committing an offence. Forgetfulness alone is no excuse, so if it is in the glove compartment of your truck or Land Rover, simply because you had forgotten to remove it, that would be no defence.

**DISPOSAL OF CARCASES**

The control of animal carcases falls within the Animal By-Products Regulations made under the Animal Health Act 1981, which implement EU Regulations. They cover all animals including poultry and an “animal by-product” includes virtually every part of an animal that is not meat for human consumption (which is subject to other strict controls).

The regulations are complicated, but the basic rule is that animal by-products must be incinerated at properly authorised premises. There are, however, a number of exemptions. An obvious example is the fallen stock scheme, where staff at licensed hunt kennels may render dead farm animals and use the meat for feeding hounds, but not certain parts such as the spinal column and brain (to prevent BSE spread).

Healthy wild animals are not included within the scope of the legislation. Their carcases are exempt, unless they are thought to be diseased or are used to produce game trophies.

Whether or not an animal is wild may be obvious, e.g. wild birds that have never been owned or controlled. In other cases, it is less certain, e.g. pheasants bred for the food chain,
albeit reared in the open and then shot on a game shoot. DEFRA and the EU have so far tended to view game birds that have been released into the wild as wild and thus outside the scope of the Regulations but the position is uncertain. DEFRA suggest:

“Where there is doubt, some of the considerations to take into account in deciding whether or not something is a wild animal are:

- Has the animal ever been fed by man?
- Has it ever been managed by man, or received veterinary attention from man?
- Has man ever established artificial boundaries that it cannot ordinarily pass?

Even if “Yes” is the answer to all or some of these questions, it is still possible that the animal is, or may have subsequently become a wild animal. This will be a question of fact in each case.”

The following may therefore be used in middens/buried:

- Dead wild animals (e.g. rats, rabbits, crows and foxes) resulting from predator and pest control activities
- Dead wild game species, grouse, pheasants, partridge, rabbits and deer, provided they are not intended for the food chain and are wild at the point of kill arising from culling and shooting sports.

The following must be dealt with in accordance with the Regulations:

- Waste eggs, chicks and dead pheasants, partridges and other game birds that have been bred and died in captivity
- Diseased wild animals, such as sick deer humanely shot
- Game waste arising from processing game carcases (e.g. offal, heads and legs of deer, feathers from plucking, waste meat, wings, feet etc.)

**SITES OF SPECIAL SCIENTIFIC INTEREST**

There are over 4,000 SSSIs in England covering 8% of the country. They range in size from a 4.5 square metre barn housing lesser horseshoe bats to large areas of woodland, grassland, heath and marsh. Natural England is responsible for enforcing the requirements and legal obligations that apply with regard to their conservation. There have been several high profile prosecutions on moors and shooting estates where damage has been caused.

The relevant legislation is contained in section 28 of the W&CA 1981.

Owners and occupiers who without reasonable excuse cause or permit any specified operation to be carried out without the consent of Nature England, face the prospect of prosecution, very substantial fines, costs and restoration costs.

In addition, any person who “intentionally or recklessly destroys, damages (or disturbs) any of the flora, fauna, geological or physiographical features” commits an offence. Ignorance that what was destroyed/damaged was in an SSSI is no defence. An offence committed in
ignorance can be punished by a fine of up to £2,500. Where it was known to be in an SSSI the fine can be much higher (up to £20,000 in a magistrates court or unlimited in the Crown Court)

HEATHER BURNING
Heather burning should be carried out in accordance with the Heather and Grass Burning Code 2007. This is a voluntary code published by DEFRA which summarises the legal requirements and outlines good practice on where to burn and how to burn safely and responsibly. Anyone involved with heather burning will need to be familiar with and follow the Code.

The legal requirements are contained in The Heather and Grass etc. Burning (England) Regulations 2007, under which it is an offence to:

- Commence burning between sunset and sunrise
- Burn without sufficient persons and equipment to control and regulate the burn throughout the entire period
- Burn without taking “all reasonable precautions” to prevent injury or damage to land or any person or thing on that land
- Burn outside the burning season – 1 October to 15 April inclusive in upland areas
- Burn in a season a single area of more than 0.5 hectares (or two or more areas within 5 metres of each other with a combined area of more than 0.5 hectares on:
  - slopes over 45 degrees
  - where more than half that area is covered by exposed rock
- Burn in a season in a way that exposes more than 0.5 hectares of bare soil (or two or more areas within 5 metres of each other with a combined area of more than 0.5 hectares)
- Leave soil smouldering for more than 48 hours

Natural England can grant a licence to cover otherwise unlawful activities where necessary or expedient for the conservation, enhancement or management of the environment or for the safety of any person.

Other laws also apply, e.g. it is unlawful to:

- Conduct any activity which disturbs or destroys wild birds, other protected animals, plants and habitats (W&CA and the Habitats Regulations)
- Burn on an SSSI without consent of Natural England if burning has been notified as an “operation likely to damage”(s.28 W&CA)
- Damage a Scheduled Monument (s.2 Ancient Monuments and Archaeological Areas Act 1979)
- Cause risk of injury, interruption or danger to road users (s.161A Highways Act 1980)
- Breach health and safety legislation, cause emissions of smoke that are prejudicial to health or a nuisance, cause water pollution.
**MEDICATED GRIT**
The new medicated grit contains an active ingredient “Flubenvet”. It is a prescription only medicine which must not be consumed by red grouse for at least 28 days before the start of shooting and not used throughout the period that shooting is taking place.

The Veterinary Medicines Regulations 2011 create offences for the unauthorised possession/use of veterinary medicines. They also impose obligations on the keepers of food-producing animals – which include game birds – to keep records. Proof of purchase must be retained and information entered contemporaneously in a medicine records book to show: product name and batch number, date and quantity acquired, name and address of supplier, date and quantity administered, withdrawal period, identification of animals treated, date, quantity and manner of disposal. Records must be kept for at least 5 years.

**NB:** The capture of red grouse using nets and lamps, for the purpose of administering medication, can be carried out in SCOTLAND under General Licence. In England there is no such General Licence and an Individual Licence would need to be applied for, to avoid the commission of an offence under s.5 W&CA.

**HEALTH AND SAFETY**
Shooting is inherently dangerous and accidents can and do occur. Shooting as an industry is very much in the public eye and accidents are quite rightly taken seriously. When accidents happen (and they don’t have to relate to shooting), the Police, the Health and Safety Executive or the local authority may investigate. Offences often lead to large fines on conviction and, in most cases, the possibility of imprisonment.

There is a mass of legislation - Acts of Parliament and Regulations - that apply. These cover the basic duties imposed on employers and employees, obligations to carry out Risk Assessments, inform employees of health and safety arrangements, consult employees, provide training where necessary, provide and maintain equipment and protective clothing, provide first aid facilities, report injuries, fatalities, diseases and dangerous incidents at work, take out employer’s liability insurance etc.

**Principal Duties**
Every employer must (a) ensure the health and safety of all his employees and (b) conduct his undertaking in such a way as to ensure that others not in his employment who may be affected are not exposed to risks to their health or safety. What is required is for the employer to do all that is “reasonably practicable”.

Every employee must take reasonable care for his own health and safety and for others who might be affected by his actions. He must also cooperate with his employer in the discharge of his obligations.

Employees – not just those with a written contract of employment or who work on a full-time or regular basis, but also those who act under the supervision or control of somebody else, even on a purely temporary basis, and even if they receive only payment in kind (e.g. a Beaters Day at the end of the season) or possibly no payment at all. If a shoot has people
working for it, such as keepers, beaters, picker-uppers, loaders and other helpers, then they could be employees.

Others who may be affected – clearly include guns, guests, contractors and members of the public.

Risk Assessment and Written Policy
Every employer must carry out a risk assessment. The Health and Safety Executive recommend 5 stages: identify the hazards, assess who might be harmed and how, evaluate the risks and decide what to do, record your findings, review your assessment and update if necessary.

If a shoot has 5 or more employees at any one time it is required to have a written health and safety policy. Even if there are always less than 5 employees, it is a good idea to have one as, in the event of an accident, it should assist in proving that all reasonable steps had been taken.

HSE Guide for Gamekeepers and Deer Farmers
The Health and Safety Executive recently published a new industry specific guide. It covers the provision of information, instruction and training, the working environment, first aid, risks to the public, harmful substances, risks from disease, off-road transport, chainsaws, overhead power lines, burning moorland vegetation, deer stalking, pheasant rearing and deer farming. It is on the HSE website at: http://www.hse.gov.uk/pubns/indg177.pdf

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14 February 2014
### SHOOTING SEASONS IN ENGLAND AND WALES

#### Game birds
- **Grouse**: 12 August to 10 December
- **Ptarmigan**: 12 August to 10 December
- **Black game**: 20 August to 10 December
- **Partridge**: 1 September to 1 February
- **Pheasant**: 1 October to 1 February

#### Wild Birds (Schedule 2 of the W&CA)
- **Capercaillie**: 1 October to 31 January
- **Coot**: 1 September to 31 January
- **Common Snipe**: 12 August to 31 January
- **Woodcock**: 1 October to 31 January
- **Golden Plover**: 1 September to 31 January
- **Moorhen**: 1 September to 31 January
- **Tufted Duck**: Above the high water mark of ordinary spring tides - 1 September to 31 January
- **Mallard**: Above the high water mark of ordinary spring tides - 1 September to 31 January
- **Pintail**: Above the high water mark of ordinary spring tides - 1 September to 31 January
- **Canada Goose**: Above the high water mark of ordinary spring tides - 1 September to 31 January
- **Greylag Goose**: Above the high water mark of ordinary spring tides - 1 September to 31 January
- **Pink-footed Goose**: Above the high water mark of ordinary spring tides - 1 September to 31 January
- **White fronted Goose**: Above the high water mark of ordinary spring tides - 1 September to 31 January
- **Pochard**: Below the high water mark of ordinary spring tides - 1 September to 31 January
- **Shoveler**: Below the high water mark of ordinary spring tides - 1 September to 31 January
- **Teal**: Below the high water mark of ordinary spring tides - 1 September to 31 January
- **Wigeon**: Below the high water mark of ordinary spring tides - 1 September to 31 January
- **Gadwall**: Below the high water mark of ordinary spring tides - 1 September to 31 January
- **Goldeneye**: Below the high water mark of ordinary spring tides - 1 September to 31 January

#### Deer and other mammals
- **Red and Sika stags**: 1 August to 30 April
- **Red and Sika hinds**: 1 November to 31 March
- **Red/Sika hybrids**: As for Red and Sika Deer
- **Fallow buck**: 1 August to 30 April
- **Fallow doe**: 1 November to 31 March
- **Roe buck**: 1 April to 30 October
- **Roe doe**: 1 November to 31 March
- **Chinese Water Deer**: All year - no close season
- **Muntjac**: All year - no close season
- **Hare**: All year - no close season
- **Rabbits**: All year - no close season

All dates are inclusive.