

Scottish Driven Grouse Moor Shooting: A Case for Reform?

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Introduction

Driven grouse moor shooting is a topical issue. In November 2018, the Royal Society of Edinburgh saw the public launch of a campaign by a coalition groups drawn from the spheres of animal welfare (Raptor Persecution UK; OneKind; League Against Cruel Sports); environmental activism (Friends of the Earth Scotland) and social reform (Commonweal).

The campaign, titled 'REVIVE: The Coalition for Grouse Moor Reform' was introduced in a keynote speech by none other than Chris Packham. He stressed that in the view of the coalition, what is happening on, and to Scottish grouse moors calls for reform. REVIVE argues that the limited current legal controls are not properly enforced but also that legislation may be needed.

Whilst one can readily understand that there is an animal welfare case to be made in relation to an activity which involves the killing of birds, there are wider issues about the environment in which those birds and other animals, such as the mountain hare, dwell. To quote from the Foreword to the case made by REVIVE:

But what of that landscape? Grouse moors have only been with us since Victorian times. It's too easy to look out over expanses of barren, depopulated and exposed moors and think that's what the uplands naturally look like. But they look that way because misguided human intervention has made them look that way. And they've been made that way to ensure that there are as many red grouse as possible to shoot for recreation. They are an amazing national resource which is being

squandered, one of Scotland's biggest failures of potential and an economic loss to us all¹.

The Moorlands and Driven Grouse Shooting

The Red Grouse is a sub-species of the Willow grouse. It mainly eats heather. Since around 1850 moorland in Scotland has been managed for the purposes of red grouse-shooting. To create suitable moorland, a series of changes took place. These included the construction of access infrastructure, the burning of heather moorland ("muirburn"), and of concern to animal welfare, the extermination of species including the white-tailed eagle, goshawk, and red kite through poisoning, trapping and shooting.

These habitat modifications were made for both red grouse shooting and driven grouse shooting. The latter involves the wild red grouse being 'driven' by beaters towards a static line of shooters. This relies upon the availability of high numbers of grouse.

Grouse moor managers use three elements of management to ensure a supply of Red Grouse. These are -

- Habitat manipulation (rotational burning of heather) to produce nutritious young heather for grouse to eat and also older heather to provide nesting cover and predator protection;
- Parasite control, including the medicating of the grouse with a veterinary drug dispensed via medicated grit and direct dosing. This is in parallel with the mass culling of mountain hares that host some parasites;

¹ Dr R. Tingay and A. Wightman, REVIVE : The case for reforming Scotland's Driven Grouse Moors. Accessible at <https://www.revive.scot/>.

- Lethal predator control – such as for foxes, weasels, stoats, crows.

Driven grouse moor management has been the subject of increasing concern. This resulted in the Scottish Government commissioning the Werritty Review on the environmental impacts of grouse moor management and the costs and benefits of large shooting estates to Scotland's economy and biodiversity. This is due to report this year.

Current Law

As a wild bird, the red grouse is *res nullius* (ownerless property). It had status as a game bird but this was ended by the Wildlife and Natural Environment (Scotland) Act 2011. This removed the distinct legal category of game species and added the species to Schedule 2, Part 1 of the Wildlife and Countryside Act 1981 as a bird that may be killed or taken (captured).

The management of red grouse is mainly under the control of those who own the land upon which the bird nests and feeds and the law only has a role in regulating matters such as the species that can be killed, the seasons and the hunting method, together with some regulation of management activities such as moor burning or muirburn. Apart from specific legislative provisions, and wider environmental and wildlife law, there is no specific body of law on grouse shooting. By contrast, fourteen other European countries regulate game bird hunting through legislation, including the licensing of individual hunters linked to strict requirement to report harvest quotas and bags. Such licences can generally be revoked if the legislation is breached. Penalties can be imposed for serious breaches. In addition, many of these countries, hunters must pass a two-part practical and theoretical examination to qualify for a hunting licence.

One option under consideration is that mooted by the Scottish Raptor Study Group. In 2016 they lodged a petition with the Scottish Parliament calling for a state-regulated licensing system for all game bird hunting in Scotland. The Werritty Review is also currently considering a potential licensing option as part of a

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REVIVE has identified a number of concerns arising from the absence of any comprehensive system of regulation. These are discussed below.

Heather Burning or 'Muirburn'

Grouse moor managers routinely burn patches of heather (known as 'strip muirburn') to create a diverse patchwork habitat to favour red grouse. This is governed by the recently-revised Muirburn Code produced by Scotland's Moorland Forum in 2017. This provides a combination of statutory requirements and 'good practice' guidelines². Muirburn is permitted only during the statutory season (1st October to 15th April inclusive) although it can be extended to 30th April with landowner's permission. Scottish Natural Heritage ("SNH") may also licence muirburn beyond the season in certain circumstances.

However, Code enforcement (apart from the seasonal restrictions) is limited. There have been suspected breaches of it such as the burning out of hen harrier nests on heather banks and of golden eagle eyries. These have been explained by grouse shooting representatives as being due to accidents relating to muirburn.³ It has also been argued that excessive muirburn has also been suggested as a factor in the long-term decline of breeding merlin on grouse moors in the Lammermuir Hills⁴.

Medicated Grit

Population fluctuations of red grouse occur, in part, because of a parasitic worm, the nematode worm, *Trichostrongylus tenuis*, a gut parasite causing

² Hill Farming Act 1946, section 23.

³ Heavisides et al, *Population and breeding biology of merlins in the Lammermuir Hills*, *British Birds* 110 at pp. 138-154

⁴ *ibid*

strongylosis. One of the intensification methods adopted has been the use of medicated grit to reduce the incidence of the worm and so avoid such fluctuations⁵.

The grit is dispensed via trays distributed across the moor. The use of grit is supposed to be administered under veterinary supervision and only as annual worm counts dictate. Even so there is no required system of monitoring for the use of the grit, including in particular, monitoring of the 28 day withdrawal period to ensure the veterinary drug *Flubendazole* does not enter the human food chain via any shot grouse⁶.

Predator Control

Red grouse are a ground-nesting species, and as such are highly vulnerable to aerial and ground predators. Under European and Scottish law all wild bird species are protected⁸, but the killing of 'pest' bird species by 'authorised persons' is permitted and regulated either by individual licences or by General Licences issued by SNH.⁷

Domestically the key legislation is found in the Wildlife and Countryside Act 1981 as amended by the Nature Conservation (Scotland) Act 2004. In European terms, the Birds Directive which is the short name for Directive 2009/147/EC of the European Parliament, provides protection. The 2009 Directive is the 'codified' or consolidated version of Council Directive 79/409/EEC. This was the original legislation that was enacted in 1979. It was then amended many times before the current version came into force. The Wildlife and Countryside Act 1981 was enacted to implement the Birds Directive and also the Bern Convention- Council Decision 82/72/EEC of 3 December 1981 concerning the conclusion of the Convention on the conservation of European wildlife and natural habitats in Great Britain. Therefore, all wild birds in Great Britain are protected today under the Wildlife and Countryside Act 1981.

⁵ Game Conservancy Trust, *Strongylosis Control in Red Grouse: current best practice guidelines for the management of strongylosis in red grouse* (2004).

⁶ *ibid*

⁷ Licences are granted under section 16 of the 1981 Act. There are three types of General Licence which are tied to the

General Licences avoid the need for individual licensing, which means that anyone without a recent conviction for wildlife crime may kill certain bird species under certain circumstances without needing any prior permission (except the landowner's), training or certification of competence, although General Licences do define conditions of use including authorised trap designs, restrictions on manner of use, provisions for the welfare of decoy birds, and the tagging of traps to identify the owner.

...enforcement of breaches of the General Licence conditions is especially problematic, particularly on large commercial driven grouse moors where multiple gamekeepers are employed.

Failure to comply with these conditions may constitute an offence under various wildlife and animal welfare legislation. However, many of these conditions have been widely and repeatedly criticised as being ambiguous and wide open to misuse and abuse.⁸

The extent of lethal bird control on driven grouse moors is unknown as there is no statutory requirement to report the number killed under a General Licence with the exception of the herring gull.

There are problems. Quite apart from having no idea how many birds are killed, or even how many traps are in use, there is no routine inspection of traps by the statutory authorities and no register of individual trap operators.

However, enforcement of breaches of the General Licence conditions is especially problematic, particularly on large commercial driven grouse moors where multiple gamekeepers are employed.

licensing purposes which are broadly conservation of wild birds, damage prevention and disease control

⁸ See for example RSPB Scotland, *The Misuse and Abuse of Crow Traps in Scotland* accessible at <https://vimeo.com/196554563>.



General Licences have of course been the subject of litigation in England. The group, Wild Justice brought judicial review proceedings in relation to three General Licences. Wild Justice argued that the three general licences (GL04, GL05, and GL06) had been granted unlawfully as Natural England had not complied with section 16(1A) of the 1981 Act⁹.

Their case was that Natural England failed to make its own assessment whether there were no other satisfactory solutions and in addition that it had unlawfully delegated responsibility for deciding that matter to Authorised Persons using the licences. Natural England accepted that there was merit in the challenged and it agreed to revoke the licences. At the time of writing SNH is understood to be considering the implications of this for General Licences issued in Scotland¹⁰ and it has

announced that it will go to consultation on General Licences in the summer¹¹.

Control of Mammals

The lethal control of some mammals notably foxes, stoats, weasels is widely undertaken on driven grouse moors. This is not covered by a General Licence. Accordingly moor managers may kill as many of these species as they wish, whenever they wish, and there is no requirement to report on the number killed.

The mountain hare is Britain's only native hare and has an important ecological role in the uplands, especially as a source of prey for top predators of conservation concern such as golden and white-tailed eagles. It is listed on Annex V of the 1992 EU Habitats Directive which requires member states to maintain populations in favourable conservation status. It is also protected

⁹ Section 16(1A) of the Wildlife and Countryside Act 1981 provides-

(1A) The appropriate authority— (a) shall not grant a licence for any purpose mentioned in subsection (1) unless it is satisfied that, as regards that purpose, there is no other satisfactory solution;...

¹⁰ For a statement of the SNH position in light of the English case see <https://www.nature.scot/general-licence-status-scotland>.

¹¹ See <https://raptorpersecutionscotland.wordpress.com/2019/05/21/snh-announces-consultation-on-general-licences/>

by a closed season under the Wildlife and Natural Environment (Scotland) Act 2011, which makes it an offence to kill a mountain hare in the closed season (1st March to 31st July) without a licence from SNH. Even so mountain hares are also killed in large numbers on many moors in Scotland.

The argument for the cull of mountain hares is that this is a means of controlling the viral disease 'Louping-ill' (LIV) in red grouse which can be transmitted by ticks that are hosted by mountain hares and other mammals and can affect grouse chick mortality. This practice is controversial as some studies have found there to be "*no compelling evidence base to suggest culling mountain hares might increase red grouse densities.*"¹²

Illegal Raptor Persecution

Full legal protection for all raptors followed with the enactment of the Protection of Birds Act 1954 as amended. Further legislation was also introduced during this period including a complex array of Scottish, UK and European-specific laws¹³. These afforded raptor species the high level of legal protection they have today, making it an offence to poison, shoot, trap, destroy nests or recklessly or deliberately interfere with a nesting raptor. Even so there is concern that the illegal killing of raptors takes place on grouse moors as a form of predator control.

Moorland and Hillside Infrastructure

Hilltracks ease access for grouse moor management purposes. However they can also have major visual and environmental impacts, particularly on the wilder landscapes for which Scotland is so highly-regarded. Private tracks constructed for agriculture or forestry use have been allowed under Permitted Development Rights (PDRs) since 1947, which exempts them from

¹² Harrison *et al*, *Culling Wildlife hosts to control disease: mountain hares, red grouse and louping ill virus*. *Journal of Applied Ecology* 47(4) at pp. 926-930.

¹³ The main protections are found in the provisions of the Wildlife and Countryside Act 1981 and the Birds Directive. Section 1 of the 1981 Act makes general provision for the protection of wild birds, their eggs and nests. Further residual protection might also exist under the Animal Health and Welfare (Scotland) Act 2006 insofar as a wild bird has been brought under the control of a person.

¹⁴ Lead based ammunition is the most significant unregulated source of lead deliberately emitted into the environment-see

the normal planning process. This has allowed tracks to be constructed without application for planning permission, the satisfaction of minimum standards, or any need to inform local authorities, statutory bodies, or the general public. From an animal welfare perspective negative impacts can include increased disturbance to wildlife.

Bird Scaring

Another technique that has emerged over recent years is the deployment of propane powered gas guns or scare cannons. These devices produce a periodic booming noise to cause a flight reaction in pigeons and geese etc. to remove them.

Lead Shot

Grouse are killed with shotguns using lead shot. Lead is a highly toxic metal that occurs naturally but has been widely distributed by human activity and it is known to pose significant threat to human health and wildlife health¹⁴. REVIVE consider that no 'safe' blood lead level in children has been identified below which negative health effects cannot be detected¹⁵ but all game birds (including red grouse) appear to be exempt from statutory testing for lead shot, in sharp contrast to other meat types destined for human consumption¹⁶.

Overview

There are of course contrary views to those maintained by REVIVE, however one of the aims of REVIVE is to open up the debate from all stakeholders.

However, at a glance one can see that in general terms this activity is subject to a very light form of regulation. Major aspects of it are not subject to any form of legal control at all and Scotland (and in indeed the wider UK) would seem to stand apart from the general picture

Wildlife and Human Health Risks from Lead-Based Ammunition in Europe: A Consensus Statement by Scientists-accessible at <https://www.zoo.cam.ac.uk/>.

¹⁵ Centre for Disease Control and Prevention, Response to advisory committee on childhood lead poisoning prevention recommendations-accessible at <https://www.cdc.gov/nceh/lead/ACCLPP/CDCResponse-Lead-Exposure-Recs.pdf>.

¹⁶ M.I. Avery, Lead Week. Accessible at <https://markavery.info/2016/01/29/lead-week-20-pbweekmia>.

found in other European countries where detailed legal control of the hunting of game birds is the norm, not the exception. Controls via a licensing regime would seem to be the most obvious way of tackling many of the concerns identified by REVIVE but as with all such regimes there needs to be an adequately evidenced basis for it.

This paper can only summarise areas of possible concern and space precludes greater coverage and views contrary to those advanced by REVIVE. However, it is fair to say that contributions from all sides will heighten the debate. In the view of the writer at least, it appears unlikely that driven grouse moor shooting and associated practices will remain subject to relatively light touch regulation as we move further forwards in a new vision for the rural environment in a 21st century Scotland.