



Poaching of game, deer and fish

- Points to prove •
- Associated offences •
- Evidence and compensation •



The British Association for Shooting & Conservation

Introduction

The British Association for Shooting and Conservation (BASC) is the national representative body for shooting sports with a membership of over 150,000.

BASC is also the representative body for the UK's professional gamekeepers, stalkers and ghillies. The association has a dedicated team of experts who specialise in this area of work.

The importance of game shooting to the rural community and the wellbeing of the countryside and its wildlife is well recognised. This contribution relies on the efforts and dedication of gamekeepers, stalkers, ghillies, game and fishery managers. However, this can be jeopardised by illegal poaching of game, deer and fish.

A common cause for dissatisfaction in poaching cases is the lack of knowledge among gamekeepers, police officers, prosecutors and the courts. If a prosecution is to be successful it is vital that gamekeepers and police officers are able to identify poaching offences and gather every piece of available evidence.

This booklet is designed to be kept in the pocket or the car as a handy point of reference should an incident occur. It advises police officers and gamekeepers of their powers and assists in writing statements. Part of the strategy is to convince prosecutors and the courts that poaching cases are worthy of prosecution and to ensure adequate penalties and compensation.

It may not always be possible to prove a poaching offence but prosecution for ancillary offences may be worth pursuing, driving a vehicle on land or trespass with a firearm, for example.

Poachers may be criminals involved in many other aspects of rural crime. Working with the police to gather intelligence and target poachers will also pay dividends in the reduction of crime in your community.



CONTENTS

Arrest – citizen’s	27
Assault	23
Compensation	30
Criminal damage	23
Crossbows	21
Deer poaching	13
Deer open seasons	37
Driving on land	22
Evidence – statement	28
Firearms	21
Fish poaching	19
Game – day poaching	6
Game – licence	11
Game – night poaching	9
Game – open seasons	34
Knives	24
Lights	22
Night	9
Theft	21
Threatening behaviour	23
Trespass	7
Weapons – offensive	24

BASC

BASC offers support and advice to all of its members on poaching issues and setting up Poacherwatch schemes. The growing number of watch schemes is evidence of the extent of the problem, and we need to know if you start a new scheme.

PAW

The Partnership for Action against Wildlife Crime (PAW) is a multi-agency body comprising representatives of all the organisations actively involved in wildlife law enforcement. The Partnership provides a forum for communication and co-operation. It pulls together experts from all fields of wildlife law enforcement, takes an overview of enforcement activity and considers strategic issues of concern to all enforcers. Its main objectives are to promote and support the enforcement of wildlife conservation legislation, particularly through assisting, advising and supporting police wildlife crime officers and their Customs counterparts.

NWCU

The National Wildlife Crime Unit has a role to ensure all aspects of wildlife crime are tackled effectively across the UK ensuring co-ordination, co-operation and communication between all agencies.

The unit specifically deals with intelligence and its analysis, and provides direct operational support to police forces and partner agencies committed to tackling wildlife crime. As a small unit it has to prioritise its work. There is a focus on tackling the six UK Wildlife Crime Priorities.

Currently these comprise:

- Raptor persecution
- Bat related offences
- Freshwater pearl mussel disturbance/taking
- Illegal endangered species trade
- Badger persecution
- Poaching.

The first four can be loosely described as conservation priorities, while the last two relate to ‘volume crimes’ – that is crime that is reported regularly and in significant volumes across the UK.

Dealing with poaching offences often leads police officers to develop an interest in tackling wildlife crime. These happen regularly all over the country involving the illegal taking of deer, fish, game and hare coursing. Poaching blights our communities – in and around towns and cities and in rural areas.

Illegal activity associated with poaching can distort the community’s views about all who engage in legal shooting and fishing, and it is in our interest to work together to address it. To do so, we need to ensure that police wildlife crime officers get to know those involved in legal activities – shooters, fishermen, gamekeepers, shoot managers and stalkers to ensure that together we continue to target those who engage in illegal activity – poaching.

Contact BASC for help and advice.

Tell us about:

- New ‘watch’ schemes
- Poaching incidents
- Court cases
- Police assistance
- Prevention measures
- Compensation claims.

**Phone us on our direct line
01244 573 019 – NOW!**

Help the police to help you by:

- Reporting suspicious vehicles.
- Reporting all dubious or suspicious activity.
- Ensuring that an incident number is obtained on each and every occasion.

DAY POACHING

Under section 30 of the Game Act 1831 (England & Wales) it is an offence for any person to trespass in the daytime by entering or being upon any land in search or pursuit of game, woodcock, snipe or rabbits.

In Scotland, under the Wildlife and Natural Environment (Scotland) Act 2011, a person shall be guilty of an offence if they do not have a legal right to kill or take a bird or mammal or the permission from a person who has a right to give permission to kill or take a bird or mammal.

In Northern Ireland, under the Game Preservation Act (Northern Ireland) 1928 (as amended 2011), Article 7A (1) Protection of game and rabbits, it is an offence for anyone to kill, take or destroy game on a Sunday or, in Article 7A (2), to kill, take or destroy any rabbit at any time, by means of a firearm on land where they are not authorised to be.

Game

Hare, pheasant, partridge, grouse, moor game and black game (plus ptarmigan in Scotland).





Daytime

One hour before sunrise to one hour after sunset.

Trespass

Trespass means a physical entry by a person onto land without permission. Trespass is not an offence in Scotland unless it is 'armed trespass'.

However, trespass is committed if a person(s) or dog(s) enters land to retrieve shot game without prior consent of the landowner or occupier of the land where the game falls.

Constructive entries onto land

For daytime trespass, it is now reasonably well established that a poacher can no longer seek the protection of the public highway, footpath or other right of way as a means to poach either there or on adjacent land. The principle that the highway or road should be treated as land in the occupation of the owner or occupier of adjacent land has been maintained over many years and has been extended to include types of constructive entries on land.

The situation in respect of trespass changes where a constructive entry is made by anyone firing a gun into another's land while actually standing on land he owns or has authority to be on, other than the public highway. The act would still be a trespass although no physical entry onto the land is made. But if the act of shooting at game takes place in the daytime and the shot game lands on land where the shooter does not have permission, he would only be liable for trespass if he physically enters the land to pick up the shot game, so a poaching offence is not committed. If such an act is committed at night, it is an offence of unlawfully taking or destroying game or rabbits on any land even though the land is not entered.

Search or pursuit

The poacher's intention to take live game, rabbits, etc., must be proved (e.g. admitting the fact, seen to fire at game, slipping a dog on a hare, ferreting in a warren or driving a car deliberately at a pheasant). Seeing the poacher kill or take game removes any doubt as to intention.

Arrest

The Game Laws provide for an authorised person to require a person found committing an offence to give their full name and address, and quit the land forthwith. He can only be arrested if the details given are false or vague, if he fails to quit the land or wilfully continues on the land, or if he returns to the land.

Authorised person means the occupier or person with the right to kill game (persons authorised by them), gamekeepers or servants.

Police powers in England & Wales stem from the Police and Criminal Evidence Act 1984 (PACE) as amended by the Serious Organised Crime and Police Act 2005 (SOCPA), in Scotland from the Criminal Procedure (Scotland) Act 1995 and in Northern Ireland from the Police and Criminal Evidence (Northern Ireland) Order 1989 as amended. In Scotland, there is no power of arrest for authorised persons.

NIGHT POACHING

This is covered by Section 1 of the Night Poaching Act 1828 and the Night Poaching Act 1844 (England & Wales).

Section 1 (a) – It is an offence unlawfully without permission from the landowner to take or destroy any game or rabbits on any land, open or enclosed (includes public roads, paths and verges), at night. An offence is only committed if game or rabbits are actually taken or destroyed.

Section 1 (b) – It is an offence to unlawfully enter or be on any land, with any gun, net, engine (e.g. snare) or other instrument (e.g. lamp, slip lead) for the purpose of taking game (rabbits not included – see Section 1 (a)). To prove the offence there must be evidence of the intention to take game. This may be by admission or, for instance, by witnessing a dog being released on a hare or seeing a gamebird being shot.

In Scotland, as a result of the Wildlife and Natural Environment (Scotland) Act 2011, there is no distinction between day and night poaching.

In Northern Ireland, under the Game Preservation Act (Northern Ireland) 1928 (as amended 2011), Article 7A (1) Protection of game and rabbits, it is an offence for any person to kill, take or destroy game at night. It is also an offence for any person to take or destroy any rabbit at any time, by means of a firearm on land where that person is not authorised to be.

Game

Hare, pheasant, partridge, grouse, heath or moor game and black game.

Night

One hour after sunset – one hour before sunrise.

Arrest

In England and Wales, under the Night Poaching Act 1828 anyone found committing night poaching may be apprehended by the owner or occupier, their gamekeepers or servants or person assisting them, on the land or adjoining highway, road or path. Police officers may in specified circumstances use PACE as amended by SOCPA or Criminal Procedure (Scotland) Act 1995.

In Scotland, there is no longer power of arrest for authorised persons.

Search and seize

In England and Wales, if a poacher is found in possession of recently killed game then a person having rights to game or the occupier, gamekeeper, servant or anyone assisting them, may demand it be handed over and, if refused, it may be taken from him. This is covered by Section 36 of the Game Act (1831) for night and day offences. Police can use PACE as amended by SOCPA or Criminal Procedure (Scotland) Act 1995.

Police officers may enter land to deal with or arrest persons suspected of day or night poaching.

It is correct that under Section 13 of the Game Act, 1831, **specially appointed** gamekeepers can seize dogs, nets and other equipment (instruments) used for killing or taking game. Firearms are not specifically included. Neither are they considered to fall within the meaning of other instruments. It was thought in the case of *Daddle v Hickton* (1868) that the legislation had never intended this section to include a gun because of the serious consequences that may arise from gamekeepers attempting to seize them. There is no power within poaching legislation expressly authorising gamekeepers to seize firearms, under any circumstance. This must be left to the police.

More importantly, it should be appreciated that, since very few gamekeepers are specially appointed, the vast majority of gamekeepers do not even have these limited powers. Such

appointments are restricted to Lords of Manors, Lordships and Royalty and have to be registered with local authorities. These provisions for enhancing certain gamekeeper's powers have largely fallen into disuse. So, under Section 36 of the Game Act, 1831, the majority of gamekeepers only have a legal power to seize recently killed game from poachers and nothing else – day or night. Neither do they have a right to search poachers or their belongings.

Gamekeepers who search poachers and seize property other than game are therefore at risk from claims of assault and civil action. They may also jeopardise any subsequent prosecution.

Game licence

There is no longer any requirement to possess a game licence or game dealer's licence in any part of the UK. However, there are specific rules relating to the sale and supply of game and venison. In Scotland, you can only sell venison that you have shot to a licensed venison dealer.

Poaching Prevention Act 1862 (repealed in Scotland by the Wildlife and Natural Environment (Scotland) Act 2011).

Under this Act, game is defined as hare, pheasant, partridge, woodcock, snipe, rabbit, grouse, black or moor game and the eggs of pheasant, partridge, grouse, black or moor game.

Under Section 2 of the Act, **anyone suspected of poaching and found with:**

- Game unlawfully obtained, or
- Any gun, part of a gun, cartridges or ammunition, or
- Nets, traps, snares or other device used for killing or taking game.

May be committing one or more of the following offences:

- Obtaining game unlawfully (if a search on the highway reveals possession of game on the poacher or in the vehicle), or

- Using a gun, net, etc., for unlawfully killing or taking game, or
- Aiding or abetting a poacher to commit either of the above.

Proceedings are by way of summons, however, powers under SOCPA could be considered. Under the Act, a police officer may seize game and equipment but not dogs or ferrets. He may also use his wider powers under PACE as amended by SOCPA.

It is not necessary to prove that game has been taken or to identify the location of the land where the poaching occurred. Even if game is found it is not necessary to show the unlawful means used, however, there must be direct or circumstantial evidence, not mere speculation that the defendant has been poaching.

This is a useful power for police officers who come across people they suspect of having been poaching. For example, if the suspect is walking away from land or in a car a police officer may stop and search any person or vehicle in any highway, street or public place, under section 2, if the officer has reasonable cause to suspect him of poaching.

Countryside and Rights of Way Act 2000 (England and Wales)

People who have access to land under the Act have no right to shoot, fish or take game. There are specific restrictions under Schedule 2.

Section 2(1) does not entitle a person to be on any land if, in or on that land, he intentionally or recklessly takes, kills, injures or disturbs any animal, bird or fish, engages in any operations of or connected with hunting, shooting, fishing, trapping, snaring, taking or destroying of animals, birds or fish or has with him any engine, instrument or apparatus used for hunting, shooting, fishing, trapping, snaring, taking or destroying animals, birds or fish.

DEER POACHING

England and Wales

Under Section 1 of the Deer Act 1991 it is an offence without the consent of an authorised person:

1(a) to enter any land in search or pursuit of deer with the intention of taking, killing or injuring it, or

1(b) while on any land to intentionally:

- Take, kill or injure any deer or attempt to do so, or
- Search for or pursue deer with such intent, or
- Remove the carcass of any deer.

Defences

It is a defence if a person:

- Believed he would have had owner's or occupier's consent if they had known the circumstances, or
- Had other lawful authority.

Authorised person

An authorised person is the owner or occupier of land, or someone authorised by him, or a person having right to take deer on that land. If an authorised person reasonably suspects someone is, or has been, committing poaching offences he may require that person to give their full name and address and to leave the land immediately. Only police officers have powers of arrest under PACE, as amended by SOCPA, for these offences.

Search and arrest

A police officer can stop and search a person or vehicle he reasonably suspects is committing or has committed any offence under the Act. He may seize any evidence and any deer, venison, vehicle, animal or weapon. He may enter land to conduct the search. A police officer may in certain circumstances arrest under PACE as amended by SOCPA.

It is now possible for a police officer to obtain a search warrant for premises, such as houses, where the power of entry does not apply. This may be granted where there is evidence that the premises might contain sufficient proof of poaching. This means that the police can take action against suspected poachers at any time, not only prior to, during or immediately after the commission of the offence. The ability to obtain such a search warrant comes from an amendment to the Deer Act introduced by the Wildlife and Countryside Act 1981 through the Natural Environment and Rural Communities Act 2006. It is often necessary to be able to provide such information to investigating officers who themselves may not be fully aware of these legislative amendments.

Scotland

Under the Deer (Scotland) Act 1996 Section 17, it is an offence without legal right or permission:

- to take, wilfully kill or injure deer on any land, or
- to remove the carcass of any deer from any land.



Defence

It could be a defence if the deer is taken or killed on a neighbour's land, if it was shot and wounded on land over which the person could shoot.

Search and arrest

If a police officer suspects an offence has been committed he may search a vehicle and persons in it. He may seize deer or any article which is evidence.

Northern Ireland

Under the Wildlife (Northern Ireland) Order 1985 Article 22, it is an offence:

(1) for any person to enter any land without the consent of the owner or occupier or other lawful authority in search or pursuit of any deer with the intention of killing, injuring or taking it.

(2) if any person, without the consent of the owner or occupier, or other lawful authority, while on any land:

- Intentionally kills, injures or takes any deer
- Searches for or pursues any deer with the intention of killing, injuring or taking it, or
- Removes the carcass of any deer or any part of a carcass.

Defence

It is a defence if:

- a) he reasonably believed he would have had the owner's or occupier's consent if they had known the circumstances, or
- b) he had other lawful authority.

Search and arrest

A police officer, with reasonable cause and without a warrant, can stop and search someone they suspect will have evidence of an offence on their person. He may also search or examine any animal

or thing which a person has in their possession if he suspects they may contain evidence of an offence. A police officer may also enter any land other than a dwelling house if he suspects an offence is taking place.

Additional offences

A deer poacher may have committed further offences such as using illegal methods, unlawful weapons or firearms, firearm certificate conditions, taking during close season, taking at night or driving a motor vehicle on land.

The taking or killing of farm or park deer considered to be captive or tame would amount to theft.

Hunting Act 2004 (England and Wales only)

The Hunting Act 2004 prohibits the use of dogs to hunt wild mammals except under the following conditions:

1. Stalking or flushing undertaken for the purpose of:

(a) preventing or reducing serious damage which the wild mammal would otherwise cause to:

- (i)** livestock,
- (ii)** game birds or wild birds (within the meaning of section 27 of the Wildlife and Countryside Act 1981 (c. 69)),
- (iii)** food for livestock,
- (iv)** crops (including vegetables and fruit),
- (v)** growing timber,
- (vi)** fisheries,
- (vii)** other property, or
- (viii)** the biological diversity of an area (within the meaning of the United Nations Environmental Programme Convention on Biological Diversity of 1992),

(b) obtaining meat to be used for human or animal consumption,
or

(c) participation in a field trial.

In subparagraph (2)(c) "field trial" means a competition (other than a hare coursing event within the meaning of section 5) in which dogs:

- (i)** flush animals out of cover or retrieve animals that have been shot (or both), and
- (ii)** are assessed as to their likely usefulness in connection with shooting.

2. Stalking or flushing out takes place on land:

- (a)** which belongs to the person doing the stalking or flushing out, or
- (b)** which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs.

Stalking or flushing out must not involve the use of more than two dogs. Reasonable steps must be taken to ensure that as soon as possible after being found or flushed the wild mammal is shot dead by a competent person, and, in particular, each dog used in the stalking or flushing is kept under sufficiently close control to ensure that it does not prevent or obstruct the animal from being shot.

However, an exemption to the Act allows the use of a single dog below ground for the purpose of preventing, or reducing, serious damage to game birds or wild birds which a person is keeping or preserving, for the purpose of their being shot.

Further exemptions include the hunting of rats and rabbits. Any hunting of mammals with dogs will be illegal if carried out without the permission of either the landowner or, in most circumstances, the occupier. As a result many poaching offences will also involve illegal hunting. However, simply being accompanied by a dog while poaching or trespassing does not amount to illegal hunting.

Protection of Wild Mammals (Scotland) Act 2002

This act prohibits the use of dogs to hunt wild mammals with the following exceptions:

Stalking or flushing an animal above or a fox or mink below ground for the purpose of;

- (a)** protecting livestock, ground-nesting birds, fowl (including wildfowl), game birds or crops
- (b)** providing food for consumption by a living creature including a person
- (c)** protecting human health
- (d)** preventing the spread of disease
- (e)** controlling the number of pest species
- (f)** controlling the number of a certain species to safeguard the welfare of that species.

The animal must be shot as soon as it is safe to do so once it has emerged and that the person is, or has the permission of, the owner or lawful occupier of that land.

This act does not place a limit on the number of dogs for the purpose of flushing a mammal to guns in order to shoot it.

A person convicted under this act may be sent to prison, fined or both.

FISH POACHING

England and Wales

It is an offence to take or destroy, or attempt to do so, any fish in water, which is private property or in which there is a private right of fishery. This includes all forms of fish, whether game or coarse, and is covered by Schedule 1 of the Theft Act 1968.

The Environment Agency and Natural Resources Wales are the governing bodies responsible for regulating and enforcing fisheries legislation in England and Wales respectively. Environment Agency fisheries enforcement officers – water bailiffs – have the same powers, liabilities and responsibilities as a police constable when enforcing fisheries legislation. Any suspected illegal fishing activity should be reported directly to the Environment Agency on their emergency line 0800 807 060. Trained staff will then be able to pass on your information to officers on duty in the relevant area. Where the fishing rights are owned or leased by a club or individual, Schedule 1 of the Theft Act 1968 will also apply.



Arrest

There is no longer a citizen's power of arrest attached to this offence. A police constable can arrest a suspect where an offence against this schedule has been committed. An Environment Agency water bailiff can only make an arrest, if, in committing the offence, the person has also contravened the Salmon and Freshwater Fisheries Act 1975 and/or Salmon Act 1986. Anything the offender had with him for taking or destroying fish when he committed the offence may be seized.



Where the fish are already owned, i.e. in enclosed water where there is no route for the fish to escape, or the fish have already been reduced into possession, they can be regarded as property, rather than wild animals. Then they are dealt with under section 1 of the Theft Act 1968.

Scotland

It is an offence to fish for salmon or sea trout without legal right or written permission in inland waters and the sea up to one mile from the low water mark. This is covered by the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951.

Fisheries Act (Northern Ireland) 1966

This legislation relates to various issues around fisheries conservation and protection and allows the making of byelaws for the protection of fish stocks.

Additional offences

Theft

Any fish taken unlawfully from an enclosed water is subject to the Theft Act 1968 (England and Wales) or Common Law in Scotland. It is also an offence to handle any salmon, sea trout, eel, freshwater fish, smelt, lamprey and any other fish specified in Salmon and

Freshwater Fisheries Act 1975 sec 40 where, under the circumstances, it would be reasonable to assume an offence had been committed. This is covered by the Salmon Act 1986 (England, Wales and Scotland).

Fishing in the close season, without an authorisation and/or rod licence, and fishing using illegal methods, e.g. set line or poison, are offences under the Salmon and Freshwater Fisheries Act 1975 (England and Wales). Several similar Acts apply in Scotland.

OFFENCES ASSOCIATED WITH POACHING

Theft

Theft may be considered where the bird, animal or fish is taken unlawfully from an enclosed environment, e.g. fish in a breeding tank or enclosed water, birds and eggs from a breeding pen, or deer from a park or farm. This also applies to farm implements and crops. This information needs to be made available to the police at the time of the incident as it can extend their powers to deal with the situation.

Firearms legislation

The legislation that relates to firearms offences differs in England, Wales, Scotland and Northern Ireland but the offences most likely to be committed by a poacher include:

- Trespass with a firearm
- Use of unlicensed firearm
- Use of firearm contrary to certificate conditions
- Illegal possession of firearms by young person
- Loaded firearm in a public place.

Crossbows

Crossbows are not classed as firearms but it is illegal to kill any bird or animal with a bow or crossbow (Wildlife and Countryside Act 1981).

Lights

Use of any form of artificial light to take gamebirds is an offence under the Wildlife and Countryside Act 1981 and the Wildlife (Northern Ireland) Order 1985.

Driving a motor vehicle on land

Under Section 34 of the Road Traffic Act 1988 it is an offence to drive, without lawful authority, a mechanically propelled vehicle on:

- Common land,
- Moorland,
- Other land of any description not being part of a road,
- Public footpath,
- Bridleway, or
- Restricted byway, except in emergencies.

It is not an offence to drive a mechanically propelled vehicle on any land within 15 yards of a road (being a road on which a motor vehicle may be lawfully driven) for the purpose of parking the vehicle on that land.

It is often easier and more productive to prosecute for motoring offences. A police check of the poacher's vehicle and documents is always recommended.



The police have some very useful powers for dealing with those who persistently commit such an offence. Where nuisance can be shown, offenders may be issued with what is known as a section 59 warning (Police Reform Act 2002), after which further instances might result in the vehicle being seized without the involvement of the courts.

Criminal damage

Criminal damage may be done to buildings, fences, hedges, crops, captive or domestic birds or animals; examples include poisoning a fish tank, injuring a dog, setting fire to a shed or haystack. In Scotland this is referred to as vandalism or malicious mischief.

Assault

This covers causing any injury. There are, however, different categories of assault (common, actual bodily harm, or grievous bodily harm) which are defined according to the injuries sustained.

Threatening behaviour

This is covered by the England and Wales Public Order Act 1986, while in Scotland it would be a Common Law crime. Under Section 4 of the above Act an offence is committed if a person uses, towards another person, threatening, abusive or insulting words or behaviour:

- (a)** with intent to cause that person to believe immediate violence will be used against him or another, or
- (b)** with intent to provoke the immediate use of violence by the other person or another, or
- (c)** whereby that person is likely to believe that such violence will be used, or
- (d)** whereby it is likely that such violence will be provoked.

Under Section 5 an offence is committed if a person uses threatening, abusive or insulting words or behaviour, or uses disorderly behaviour, within the hearing or sight of a person likely to cause harassment, alarm or distress.

Sections 4 & 5 cater for confrontational situations which can be committed in public or private places but not inside a house. They apply equally to gamekeeper and poacher alike. It is necessary to prove the intent to create a fear of violence, harassment, etc., which will rely on accurately recording the words and actions used by each individual. Only the police have powers of arrest.

Witness intimidation

Threats made towards gamekeepers, their family or property are covered by Section 51 of the Criminal Justice and Public Order Act 1994 (England and Wales) and Common Law in Scotland. The offence can be committed by any person who intimidates a person assisting in an investigation, a witness or juror. Threats need not be made in the presence of the person and may be financial as well as physical.

The Protection from Harassment Act 1997 (the 'anti-stalking' Act) contains offences of harassment and accusing fear of violence.

Offensive weapons

It is an offence without reasonable excuse to have an offensive weapon in a public place under Section 1 of the Prevention of Crime Act 1953 and the Criminal Law (Consolidation) (Scotland) Act 1955. An offensive weapon is something made or adapted to cause injury, e.g. a baseball bat with a nail in it, knuckle-duster or cosh. It can also be anything which is used for the purpose of being an offensive weapon, e.g. walking stick or hammer. Only the police have powers of arrest.

Knives

Under the Criminal Justice Act 1988 & Violent Crime Reduction Act 2006, it is now illegal to have any sharply pointed or bladed instrument in your possession in a public place without good reason or lawful authority. A public place is anywhere that the public has, or is permitted to have access to, which includes footpaths, roads and highways, shops, and pubs for example.

A good reason for carrying a knife may be shown by occupation, for example a farmer, estate manager, recreational stalker, game shooter or angler. If you leave a knife in your car or go into a shop with a knife in your pocket when you are returning from or going to a place where you farm, fish or shoot, etc., then this would constitute good reason even though you do not have an immediate need to use the knife. Leaving a knife in the car or in your pocket for when you next go shooting, or forgetting that it is there is illegal.

There is an exemption in law for folding pocket knives. These must have cutting edges of less than three inches, do not lock and must be foldable at all times.

Deter or prosecute

You must decide whether you are prepared to stop poachers in a bid to arrest and prosecute or to deter them by driving them off your land. For a prosecution to have a good chance it is often better to observe quietly, gather the evidence and step in after an offence has been committed.

Trying to prove a poacher's intentions while in pursuit is more difficult and provides numerous excuses, e.g.: "I was only exercising my dog and it ran after a hare".

To let the pursuit continue, however, may cause more damage by disturbing livestock, partridge or pheasant and ruin shooting for the next day. In these circumstances it may be better to show a presence and get them off the land.

Observation and identification

Recording an incident from start to finish with written notes, photographs, video or tape recording is always more useful than your recollections. Always have a notebook and pen available to record details at the time or as soon as possible after the event, e.g. on return to your vehicle or when the police arrive. Tell the police about the notes, photographs, video or tapes to validate their authenticity.

It is vital that you record what each individual did and said. Identify each one by their personal features and clothing, e.g. the one in the wax jacket and the one in the cammo trousers. Record details such as: who was driving; who had the dog, lamp or gun; what was said and by whom. Some offenders will also change their clothes to create confusion. Make a note of weather conditions and your ability to see what was happening, i.e. “the poachers were hunting in the middle of a field where my view was not obstructed” or “although the poachers were operating within a wooded area, I was able to observe their activity from the end of a ride”.

It is sometimes easier to get a result by prosecuting poachers for motoring offences especially if they have been drinking. Try to identify the driver and the vehicle and road or location where driven. Identify the vehicle by its registration, colour, model, accessories, damage or repairs.

Continuity

Continuity is vital, particularly where you are following poachers across fields in the dark. Normally this would require an unbroken chain of events e.g. you see the lamper in the fields at night. By the time you get to the field the lamp is off, you lose sight of the lamper but you then come across a man with a dog and a lamp on a footpath next to the field. You may not be able to prove this is the same person who was lamping in your fields unless you can state you watched the person continuously from the field to the point where you met on the footpath.

Using the caution (England and Wales)

Keepers may question possible poachers to establish:

- Identity
- Ownership of a vehicle, equipment, a dog, etc.
- Rights to be on land, take deer, fish, etc.

Further questioning is better left to the police as the evidence gained may only be accepted by a court if the caution is given, i.e. “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.” A caution must also be given if a keeper makes an arrest.

Arrests

Arrests are obviously a matter of great significance and consequence. Anybody who decides to effect an arrest must be clear as to the power being exercised and be prepared to justify their actions.

There are clear health and safety considerations to be taken into account and a risk assessment should be undertaken. Such an assessment will involve consideration of at least:

- The use of force (bear in mind that gamekeepers are not authorised to carry anything that could be considered to be an offensive weapon)
- Personal safety
- Security and safety of any prisoners
- Contact with the police
- Lone working.

In addition, anybody who carries out an arrest must understand the power that is being utilised. For example, a person who commits offences under the Night Poaching Act may be arrested but you can only rely on the power provided by the Game Act 1831 if offenders fail to provide names and addresses or if they return to the land.

Citizen's arrest

The issue of citizen's arrest is problematic. The law (PACE) allows anybody to effect the arrest of a person who has committed an indictable offence. Indictable means an offence that can be tried by magistrates or may be referred upwards to Crown Court, for example theft or most assaults. **No poaching offences are indictable; they are only dealt with by magistrates, and as such the citizen's power of arrest is not available.**

In addition to the health and safety concerns, consideration needs to be given to our litigious society. If the incorrect power of arrest is used, if an arrest is carried out with no charges being laid, or if the accused is found not guilty, there is the potential for those involved in the arrest to face civil litigation (being sued).

It is our advice that powers of citizen's arrest, although available, should not normally be used. Those who are expected to make arrests as part of their employment should discuss the issues raised in this paragraph with their employers.

Your statement

Any statement you are required to give will need to contain not only the evidence but also justification for spending court time and money on what may appear to some to be a trivial matter. Your statement can influence the decision to prosecute and the penalties. A poaching case must pass two tests before it can get to court:

1. There must be sufficient evidence to secure a prosecution.
2. It must also be considered to be in the public interest to prosecute.

Decisions as to which cases proceed to a court hearing are not made by the police. Where the police feel that there is sufficient evidence to bring a case, they refer papers to the Crown Prosecution Service (CPS). It is for the CPS to make the decision as to whether a case is prosecuted.

Many poaching cases fail if the details which justify prosecution and subsequent penalties are not included in the statement. Do not expect the police, prosecutors and courts to have knowledge of how shooting and fishing are financed and the effects of poaching on them.

The following is the basis of your statement. It includes options to cater for different circumstances and offences. Once you have created your own standard statement you can use it time and again.

“I am the (gamekeeper, river bailiff, landowner, tenant, farmer, shooting tenant, or other) in respect of (land/water), situated at (detail the area involved)”

Outline the responsibilities of the role, including:

- Your employer (e.g. estate, fishing club, shooting syndicate).
- What you provide (e.g. pheasant/partridge shooting, trout or coarse fishery).
- Who you provide it for (e.g. private owner, syndicate or public).
- How you do it (e.g. rearing and/or buying in of birds/fish).
- How you look after them (e.g. hatching, rearing, feeding, releasing, protection from poachers and predators, night patrols, holding birds on land, etc.).
- If the shoot/fishery is partly or wholly commercial, explain let days or fishing permits.
- How costs are calculated (e.g. what is charged per bird/fish).
- What is the effect of poaching (e.g. you are unable to provide the level of sport expected, drives ruined by disturbance at night, loss of revenue, income tax and VAT. Effect on the local economy through equipment purchases, accommodation, food, threat to employment).
- Were animals, especially deer, injured and left to die?
- Was livestock worried or disturbed?
- Does poaching affect proper deer management through indiscriminate killing?
- State public health risks from poached venison, game and fish.
- Were the poacher's acts wilful (e.g. was it a poaching gang from the city out to clear a wood, or a couple of kids with a bent pin dangling a line? Was there any expression of regret?)?
- Give details of your injuries (e.g. were there any threats/intimidation at the time or for the future? Have you experienced any from these or other poachers in the past?).
- State why poaching is a problem in your locality.
- Is a failure to prosecute taken as a sign of weakness leaving gamekeepers, their families and property further exposed to violence, intimidation and financial loss?

Compensation

Claim compensation at the commercial value; e.g. pheasants £35 – £50 plus VAT or the cost to the club; e.g. total costs divided by number of fish stocked. It is difficult to apply a value to lamping hare and rabbit but you should explain the potential for spoilt drives by disturbing partridge or pheasant. Include disturbance to livestock, damage to fences, gates left open etc. In the case of brown hare, however, it is worth making the point that they are a species of conservation concern and that poaching can have a greater environmental impact.

“I ask that compensation of £ per bird/fish be awarded in accordance with *Haslam v CPS Derby Crown Court, 1991*, this being the value of the bird/fish to my employer/club” (The court awarded £10 per pheasant in 1991).

Limitation of proceedings

In criminal law most poaching offences are subject to what is known as the Statute of Limitations. This means that prosecutions have to be commenced within certain time limits; if the date for commencement passes, a prosecution cannot be taken. For many poaching offences the time limit is only three months from the date of the offence. Other offences have longer time limits but six months from the date of the offence is the most common.

Some investigators will be unaware of the time limits, in particular the short three-month limit for poaching offences. You should ensure that such matters are raised at the earliest opportunity and the matter pressed as the time limit approaches.

Further action checklist

- Immediately after each incident, write to the local police and the CPS or Procurator Fiscal expressing your concerns.
- Emphasise that you wish to see a prosecution.
- Make a request for compensation.

TELEPHONE NUMBERS

Pass details of poaching incidents or suspicious activity of any kind to your local police officer or watch co-ordinator as soon as possible.

POLICE STATION

POLICE HEADQUARTERS

POLICE WILDLIFE LIAISON OFFICER

POACHERWATCH

BASC 01244 573 000

Gamebird and Waterfowl OPEN Seasons (dates inclusive)

Species	England and Wales	Scotland	Northern Ireland	Isle of Man
Pheasant	Oct 1 – Feb 1	Oct 1 – Feb 1	Oct 1 – Jan 31	Oct 1 – Jan 31
Grey Partridge	Sep 1 – Feb 1	Sep 1 – Feb 1	Sep 1 – Jan 31	Protected (ban in force)
Red-legged Partridge	Sep 1 – Feb 1	Sep 1 – Feb 1	Sep 1 – Jan 31	Sep 13 – Jan 31
Red Grouse	Aug 12 – Dec 10	Aug 12 – Dec 10	Aug 12 – Nov 30	Aug 25 – Oct 31*
Black Grouse	Aug 20 – Dec 10 (Somerset, Devon and New Forest: Sep 1 – Dec 10)	Aug 20 – Dec 10	--	--
Ptarmigan	--	Aug 12 – Dec 10	--	--
Duck & Goose inland	Sep 1 – Jan 31	Sep 1 – Jan 31	Sep 1 – Jan 31	Sep 1 – Jan 31 - Ducks July 1 – Mar 31 - Geese**
Duck & Goose below HWM (see next page)	Sep 1 – Feb 20	Sep 1 – Feb 20	Sep 1 – Jan 31	Sep 1 – Jan 31 - Ducks Jul 1 – Mar 31 - Geese**
Common Snipe	Aug 12 – Jan 31	Aug 12 – Jan 31	Sep 1 – Jan 31	Sep 1 – Jan 31
Jack Snipe	Protected	Protected	Sep 1 – Jan 31	Protected
Woodcock	Oct 1 – Jan 31	Sep 1 – Jan 31	Oct 1 – Jan 31	Oct 1 – Jan 31
Golden Plover	Sep 1 – Jan 31	Sep 1 – Jan 31	Sep 1 – Jan 31	Protected
Coot/Moorhen	Sep 1 – Jan 31	Sep 1 – Jan 31	Protected	Protected

HWM – High Water Mark

England and Wales: The area of sea shore which is more often than not covered by the flux and reflux of the four ordinary tides occurring midway between springs and neaps.

Scotland: Area between high and low water marks of ordinary spring tides.

Northern Ireland: The limit of where the living seaweed is attached to the stones of the foreshore.

Isle of Man: *Currently a voluntary ban on shooting red grouse is in place. **Geese can only be shot under general licence under the Wildlife Act 1990 (see the Department of Environment, Food and Rural Affairs (DEFA) website for terms and conditions of the general licences:

www.gov.uk/government/organisations/department-for-environment-food-rural-affairs

Ground Game OPEN Seasons (dates inclusive)

Species	England and Wales	Scotland	Northern Ireland	Isle of Man
Brown Hare	Jan 1 – Dec 31	Oct 1 – Jan 31	Aug 12 – Jan 31*	Oct 1 – Jan 31
Mountain Hare	moorland & unenclosed land is subject to a close season**	***Aug 1 – Feb 28/29		(brown or common hare)
Rabbit	Jan 1 – Dec 31 moorland & unenclosed land is subject to a close season **	Jan 1 – Dec 31	Rabbit is classed as a pest and therefore not subject to a close season	No close season

* The Special Protection Order previously issued to give Irish hare additional protection is no longer in place and therefore the Irish hare is now subject to an open season as above.

** Moorland and unenclosed land does not include arable land or detached portions of land less than 25 acres which adjoins arable land.

In England and Wales, occupiers or authorised persons may only take and kill ground game on moorland or unenclosed land between 1 September and 31 March inclusive. Firearms may only be used for such purposes between 11 December and 31 March (Ground Game Act 1880 Section 1 (3) and Ground Game (Amendment) Act 1906 Section 2).

In Scotland, the occupier of the land or persons authorised by him, may kill rabbits throughout the year on moorland and unenclosed land (not being arable) by all legal means other than by shooting, and by means of firearms over the period from 1 July to 31 March inclusive (Section 1 (3) of the Ground Game Act 1880 as modified by the Agriculture (Scotland) Act 1948). Hares are subject to a close season (Wildlife and Natural Environment (Scotland) Act 2011) (see table).

***Following the passage of the Animals and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020, the mountain hare will receive full protection at the end of 2020 or in 2021. Shooting of mountain hares would then only be allowed under licence from NatureScot.

Statutory OPEN Seasons for Deer (dates inclusive)

Species & Sex	England and Wales	Scotland	Northern Ireland
Red			
Stags	Aug 1 – April 30	July 1 – Oct 20	Aug 1 – April 30
Hinds	Nov 1 – Mar 31	Oct 21 – Feb 15	Nov 1 – Mar 31
Sika			
Stags	Aug 1 – April 30	July 1 – Oct 20	Aug 1 – April 30
Hinds	Nov 1 – Mar 31	Oct 21 – Feb 15	Nov 1 – Mar 31
Red/Sika hybrids			
Stags	Aug 1 – April 30	July 1 – Oct 20	Aug 1 – April 30
Hinds	Nov 1 – Mar 31	Oct 21 – Feb 15	Nov 1 – Mar 31
Fallow			
Bucks	Aug 1 – April 30	Aug 1 – April 30	Aug 1 – April 30
Does	Nov 1 – Mar 31	Oct 21 – Feb 15	Nov 1 – Mar 31
Roe			
Bucks	April 1 – Oct 31	April 1 – Oct 20	--
Does	Nov 1 – Mar 31	Oct 21 – Mar 31	--
Chinese Water deer			
Bucks	Nov 1 – Mar 31	--	--
Does	Nov 1 – Mar 31	--	--
Muntjac			
There is no statutory closed season for this species. It is recommended that when culling female muntjac, immature or heavily pregnant does are selected to avoid leaving dependent young.			

IF YOU SEE SOMETHING WHICH YOU CONSIDER REQUIRES URGENT POLICE ATTENTION, PLEASE CALL 999.

PLEASE USE THE PHONETIC ALPHABET TO PASS VEHICLE NUMBERS BY TELEPHONE OR RADIO.

A	ALPHA	N	NOVEMBER
B	BRAVO	O	OSCAR
C	CHARLIE	P	PAPA
D	DELTA	Q	QUEBEC
E	ECHO	R	ROMEO
F	FOXTROT	S	SIERRA
G	GOLF	T	TANGO
H	HOTEL	U	UNIFORM
I	INDIA	V	VICTOR
J	JULIET	W	WHISKY
K	KILO	X	X-RAY
L	LIMA	Y	YANKEE
M	MIKE	Z	ZULU

Images courtesy of Tayside Police

Published by

The British Association for Shooting and Conservation Ltd
Marford Mill
Rossett
Wrexham
LL12 0HL

Tel: 01244 573 000

Website: www.basc.org.uk

© 2020 British Association for Shooting and Conservation (BASC) Ltd



The British Association for Shooting & Conservation

Poaching – A Rural Crime

BASC Campaign Against Poaching

Tell us about your

- New watch schemes •
- Poaching incidents •
 - Court cases •
 - Police assistance •
- Prevention measures •
- Compensation claims •

**Phone us on our direct line
01244 573 019 – NOW!**

- Always help the police to help you •
- Report any suspicious vehicles •
- Report all dubious activity •