

Deer/Legal

Deer in road collisions

NGO Development Officer, Tim Weston, has teamed up with Richard Atkins, partner at Knights Solicitors to answer some of your questions regarding dealing with deer in road traffic accidents.

MANY KEEPERS AND DEER STALKERS ATTEND road-side collisions involving deer and other animals. There are differing views about whether it is sensible to get involved and, at the NGO, it is a subject about which we are often questioned. Here we provide answers to some recent questions which we hope will help you come to an informed decision as to whether you should get involved.

I. IS IT LEGAL TO USE A FIREARM ON THE ROAD-SIDE, EVEN IF REQUESTED TO BY THE POLICE?

Yes: Although s161 Highways Act 1980 makes it an offence to discharge a firearm within 50 feet of the centre line of the

carriageway, it is prefaced by the words “*without lawful authority or reasonable excuse*”. The wording of the offence also requires one or more of the following ingredients, “*and in consequence of which a user of the highway is injured, interrupted or endangered*”. These additional elements of the offence are often overlooked.

2. SHOULD I EVER ATTEND WITHOUT THE POLICE THERE?

Attendance is one thing, but attendance with a firearm is another. If you are called out, using a firearm, to deal with a deer casualty, it is reasonable for you to expect the police to attend as well to

supervise the activity and ensure that no member of the public could be alarmed.

3. SHOULD THE ANIMAL BE DESPATCHED BY A FIREARM OR EXSANGUINATION WHICH IS A METHOD SOME RECOMMEND?

This is a difficult question to answer. Generally, humane despatch by a firearm is by far the best method if available. The difficulty with exsanguination is that this can cause equal if not more distress and alarm to those witnessing the act who may be unfamiliar with the process. This could then lead to a brush with the law in the form of animal welfare offence if there is a complaint.



TONY LOWRY



4. WHO CAN AUTHORISE THE CIVILIAN TO UNDERTAKE HUMANE DISPATCH?

Strictly speaking only the representatives of the owners of the land can authorise humane dispatch of deer on their land (eg. Highways Authorities in the case of public highways or Highways England for motorways and trunk roads). In practice these powers tend to be assumed by police forces.

5. DO I NEED MY FIREARMS CERTIFICATE (FAC) CONDITIONS AMENDED TO BE ABLE TO UNDERTAKE HUMANE DISPATCH?

Yes. You will need to apply to your FAC licensing force for an amendment. Failure to do so could lead to breach of a condition of an FAC or shotgun certificate which could lead to prosecution or revocation of the certificates.

6. WOULD THERE BE REPERCUSSIONS FOR ME IF I CAUSED A FURTHER ACCIDENT (EVEN IF IT WERE A MINOR RTA BY DISCHARGING A FIREARM – FROM SOMEBODY SLOWING DOWN TO LOOK, FOR EXAMPLE)? IF I AM WORKING FOR THE POLICE AM I EXEMPT FROM PROSECUTION?

You are not exempt. As in a case of careless driving, if you have an accident (even if it was not your fault) you could face prosecution. The same would apply to an FAC holder who attended on a road-side to dispatch a casualty deer during which there was an RTA as a direct or indirect result of it. Even the police have no exemption from RTA offences in such cases. Nonetheless, it would be better to let the police supervise the traffic, take responsibility for the despatch, and handle the public.

7. WHAT MUST HAPPEN TO THE CARCASS BY LAW?

If you have done the authorised dispatch, you can remove a deer carcass, assuming that neither the Highways Authority representative nor the attending police officer request it. Shooting it or otherwise dispatching it by exsanguination and leaving it to bleed in the gutter would probably be an Environmental Protection Act 1990 offence, so if you attend to deal with a deer casualty, you need to be ready, willing and able to take the carcass away.

8. WHO CAN CONTROL TRAFFIC?

If you attend and have no police officer or Highways Authority officer with you, then you need to make arrangements to control the traffic for your own safety

NOTE IT!

KNIGHTS SOLICITORS

Richard Atkins is a Partner of Knights Solicitors, Tunbridge Wells. Knights Solicitors have dealt with numerous investigations and prosecutions under the Animal Welfare Act 2006 and Wildlife & Countryside Act 1981. Knights Solicitors specialise in countryside and country sports litigation and have acted on behalf of gamekeepers throughout England and Wales. Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins or Joshua Quinn.

NGO FREE LEGAL HELPLINE

NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins and Joshua Quinn, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales:
Michael Kenyon, Solicitor (Macclesfield).
01625 422275 or 07798 636460.

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and that of other road users. You need to have at least one – preferably two – assistants, together with warning signs, so that traffic slows to avoid the hazard. Under the Road Traffic Acts, all road users have a *right* to warn other road users of hazards if they wish to do so, but only the police and Highways Authorities have a *duty* to do so.

9. IF OTHER MEMBERS OF THE PUBLIC MAKE A COMPLAINT ABOUT ME, COULD I LOSE MY FAC?

This is possible but would depend on the type and manner of the complaint. It is likely that you would have your FAC and your firearms taken away while any investigation is being carried out. Whether you have your certificates and guns returned would depend on the outcome of the investigation.

10. ONE LAST WORD AND THAT IS 'INSURANCE'

It is sensible to have insurance cover for shooting activities as, generally, household insurance will not cover incidents outside the home. An advantage of specialist shooting insurance is that it avoids raising your household premium if a claim has to be made. Because of the risks associated with despatch of wildlife by a road, it is important to seek appropriate cover. Assisting the Police or Highways Authorities does not mean that they or their insurers will accept liability if something goes wrong. Your NGO members' insurance does not cover

roadside dispatch as the cover is limited to 'leisure purposes only', which this particular activity clearly is not. However, bolt-on cover is available; if you are interested, please contact the NGO office to be put in contact with the NGO's insurers.

THE DECISION IS YOURS

The ultimate decision as to whether you undertake a road-side dispatch or join one of the police-organised schemes is entirely up to you. It is an important task; none of us want to see animals suffering on the side of the road. However, you will have to weigh up the risks and, until there is a national policy that every police force agrees and adheres to, the cons seem to outweigh the pros for now.

Many thanks to the NGO Deer Branch sponsors for their support.



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