

Legal feature

Bring out your dead

Matthew Knight of Knights Solicitors explains what the law says you must do with carcasses.

GAMEKEEPERS OFTEN FIND THEMSELVES HAVING to deal with carcasses. The principal purpose of gamekeeping is to provide and protect animals for sport, and the direct consequence of this is the supply of pheasants, partridges, ducks, deer, hares, rabbits and other game animals for the table or for sale. This article is not going to deal with that important, central function where game animals find their way into the human food chain. A slightly less well known, but equally important function of gamekeepers' duties is the disposal of other animal carcasses, either because they are not fit for the table or for sale or because they are a by-product of pest control operations and are not commonly eaten in European cultures even if they are regarded as delicacies in

other cultures. In addition, gamekeepers find themselves to be the first port of call for the police or local people when there has been a fatal collision between a wild animal and a motor vehicle.

DISPOSAL OF CARCASSES

The control of animal carcasses is now regulated by Animal By-Product (Enforcement) (England) Regulations 2013. These Regulations revoke and replace the Animal By-Products (Enforcement) (England) Regulations 2011, consolidating amendments, and revoking the Animal By-Products (Identification) Regulations 1995 in respect of England. It covers 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 basic rule is that animal by-products must be incinerated at properly authorised premises. There are, however, numerous 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 carcasses are exempt unless they are thought to be diseased or are used to produce game trophies, in which case there is a responsibility on the landowner to ensure they are disposed of in accordance with the regulations.

Whether or not an animal is a wild animal is a question of fact. In most cases it will be obvious. For example, wild birds that have never been owned or controlled are wild animals. Pheasants bred for the food chain, albeit reared in the open and then shot on a game shoot, may be covered by the Animal By-Products Order and so cannot just be buried if not used for food. Defra and the EU have so far tended to view gamebirds that have been released into the wild as wild and thus outside the scope of the Order but the position is uncertain. Defra suggests:

"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."

Is it right that gralloch should be incinerated, rendered in an approved plant, buried on the holding where shot or otherwise killed, or double-bagged and put out in waste to landfill bins?



LINDSAY WADDELL



So, which dead animals are exempt from the Order and may be used in middens, buried or indeed just left where they died? Clearly this would apply to dead rats, rabbits, crows and foxes resulting from predator and pest control activities. It would also apply to dead wild game species, grouse, pheasants, partridges, rabbits and deer, where these are not intended for the human food chain and are wild at the point of kill arising from culling and shooting sports.

Waste eggs, chicks and dead pheasants, partridges and other gamebirds that have been bred and died in captivity must be dealt with in accordance with the Order and not just buried or left lying about. They certainly cannot be used in a midden. The same applies to diseased wild animals, such as sick deer humanely shot.

The Waste Framework Directive and its UK application also need to be borne in mind. The Environment Agency has made it clear that although it accepts that the Animal By-Products Order does not apply to the carcasses of healthy (at the point of death) wild animals or parts of such carcasses, they are looking for an opportunity to prove that the more general waste management rules (under the Environmental Protection Act 1990) do apply to everything including carcasses or body parts of healthy wild animals. This has yet to be tested in the courts, but the Environment Agency's threat needs to be borne in mind by anyone who has a glut of dead foxes or dead pheasants and is thinking of using them to make a midden. If you want to avoid a court case (even if you win it in the end) it may be best to buy one of the American chemical lures that are readily available online at a reasonable cost rather than using residual deer, fox or pheasant carcasses

that would, on a quiet news day, give an anti-shooting story "legs": something that a synthetic lure will never do.

My spies tell me that the Environment Agency has warned the Deer Initiative that gralloch should either be incinerated or rendered in an approved plant or buried on the holding where they were shot or otherwise killed or double-bagged and put out in waste to landfill bins.

My opinion is that this view is wrong and that in the absence of actual environmental damage, any prosecution by the Environment Agency is bound to fail (or at least will result in nothing worse than a conditional discharge), but informed commentators disagree with me and the more cautious among you may prefer not to take the risk of an investigation.

Although not directly relevant to

shooting, it is as well to see what the Environment Agency has ordered in relation to rodent carcasses arising as a result of lawful on-farm poisoning. The new rules are to be found online at: www.environment-agency.gov.uk/static/documents/Business/MWRP_RPS_014_rodents_on_farms_v3_Mar_2011.pdf

Amongst other things, they require pest controllers and farmers to dig a hole at least two metres deep, refill it so that there is at least one metre of soil under the carcasses before backfilling to ground level. This precaution is to prevent soil or ground water from becoming polluted by rodenticide, notwithstanding that there is no evidence whatever that there has ever been an instance of rodenticide-based pollution of soil or ground water by lawful rodenticide in modern times.

FURTHER INFORMATION

KNIGHTS SOLICITORS

Matthew Knight is the Senior 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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