

Scottish Government Consultation on a prospective Wildlife & Natural Environment Bill: Changes proposed to the deer legislation

Introduction

The consultation on the prospective [Wildlife & Natural Environment Bill](#) began on 15 June and will run until 4 September 2009. The deer section contains all the DCS proposals in the [Review of Deer Legislation](#). This briefing provides further background information that expands on the rationale behind and further detail of the proposals currently being consulted on.

Summary Briefing

The current legislative framework for Scotland's wild deer is now fifty years old. While it was added to in 1996 to include a greater consideration of the natural heritage, it is archaic and no longer fit for purpose. The Scottish Government published a new approach to Scotland's wild deer in November 2008, setting out a vision of sustainable deer management; and a new legislative framework would help to ensure delivery of that vision.

The proposals for reform link the private right to shoot deer to a responsibility to manage deer sustainably. This is entirely appropriate for the 21st century. This new framework would facilitate collaborative local management, combining devolution of decision making and clarity of expectations through a code of sustainable deer management, with credible backstop powers for intervention when the public interest is compromised. Taken as a package, the proposals aim to raise standards at all levels from the individual stalker to the overall management of the national deer resource, protecting Scotland's international reputation, and the reputation of the deer sector.

The proposals recognise that voluntary deer management, devolved to a local level, and delivered primarily through Deer Management Groups, should remain at the heart of local collaborative deer management. Compulsory powers would only be used where the voluntary system is failing to deliver.

The public view deer as an iconic species and concerns have been raised about deer welfare in a number of high profile cases which have received substantial media coverage. As issues of deer in and around towns and on Scotland's roads become more apparent, concerns are likely to rise. The proposals address public concern by requiring that all those who shoot deer to demonstrate skills and knowledge, and be registered.

Scotland needs to make the most from its natural assets. Deer are a key part of those assets, and require a modern legal framework.

Main changes proposed

- Deer management
 - Duty to manage deer sustainably, backed by a code that sets out expectations on landowners
 - Backstop powers of compulsory deer management planning and delivery of plan where duty not being discharged
- Deer welfare
 - All those who shoot deer should be required to demonstrate skills and knowledge, to deliver the public interest in deer welfare, public safety and food safety.

Once these new measures are in place, some of the existing regulatory provisions and loopholes could be reduced or removed, including Close Seasons, authorisations and exemptions for owner-occupiers.

Current legislation

Weaknesses

- Archaic – based on 1959 Act, which prioritised sporting interests
- Stakeholders called for change in consultation on merger of DCS and SNH
- Narrow focus of public interest as public safety and damage to natural heritage, and a lack of flexibility for future challenges, including climate change adaption and mitigation
- Context changed:
 - More complex and diverse pattern of objectives and land use among landowners
 - Larger populations and range of all deer species
 - Greater emphasis on aspects of public interest needing to be delivered
 - Desire for more community/interest group involvement
 - Increased public expectations of animal welfare standards

Not fit for purpose

- No incentive for managers to collaborate
- Lack of credible back stop powers to protect the public interest

Anomalies

- Owner/occupiers of agricultural or enclosed forestry are exempt from existing (limited) mechanisms to safeguard deer welfare, which are imposed on other land managers

Proposals

Modernise & Implement government policy objectives

- Deliver Scottish Government Strategy 'Scotland's Wild Deer: A Nation Approach' vision for sustainable deer management
- Provide flexibility for deer management as the public interest in the way that land is managed to mitigate and adapt to climate change develops
- Focus government intervention on the areas of highest welfare risk and where there has been a failure of the voluntary approach, thereby reducing overall bureaucracy
- Support achievement of forestry strategy target to increase woodland cover to 25%
- Support a sustainable Scottish deer sector as part of the government's purpose of sustainable economic growth

Proportionate

- There is acceptance from among land managers and public agencies that reform to the current system of local deer management is needed
- There is compelling anecdotal evidence, and acceptance among practitioners, that standards of skills and knowledge are uneven across the deer industry and should be higher
- Most experienced stalkers will already have the required levels of knowledge and experience. Training and assessment for more inexperienced stalkers should cost no more than £350 per person on average.
- The deer proposals are in line with the proposed requirement for training for all those who set snares, and a 'lighter touch' than the compulsory testing/assessment for all hunters required in most European countries.
- A central register, expanding DCS' existing 'Fit and Competent' register, is a cost effective way to keep a record of qualified stalkers.

Detailed Briefing

All of these questions are answered on the basis of the discussions within DCS and with the DCS' Legislation Sub Committee. As they concern possible future legislation, the answers are indicative only.

DEER MANAGEMENT

Duty to manage deer sustainably

1) Why do we need to place a duty to manage deer on landowners/occupiers?

At the moment landowners and occupiers have a right to take the deer on their land, subject to the current controls contained within the Deer (Scotland) Act 1996 regarding when and how deer are killed, but there is no corresponding or underlying duty to manage deer sustainably as a common resource. DCS considers that with these rights should be balanced with clear responsibilities, including an obligation to manage deer in a way that takes account of the interests of others. The introduction of a duty to manage deer, supported by a detailed code, would clarify expectations on landowners.

2) To whom would the duty apply?

The duty would apply to owners and occupiers of larger areas of land where deer are resident in significant numbers, and as a result require management intervention and collaboration to protect the public interest. The public interest may range from minimising environmental or economic impacts, to minimising the risks to public safety and deer welfare.

3) How would 'sustainability' be defined?

The Government's Wild Deer Strategy defines sustainable deer management as the conservation, control and use of all species of deer so as to contribute to a high quality, robust and adaptable environment, sustainable economic development and social well being. In practice, this means the management of deer resource in a way that allows, as far as possible, for the achievement of landowner's economic objectives, while maintaining a healthy population at a level that does not adversely impact on the natural environment.

We recognise that there may be difficulties in defining 'sustainability' in legislation when considering the management of deer. Complex and conflicting land management objectives are not uncommon, and consideration could be given to whether or not 'responsible' deer management is easier to define and describe than 'sustainable', taking account, for example, of the legal definition of responsibility outlined within the recent access legislation.

4) What would this mean in practice – what would the nature of the duty be? What would be the link to deer management plans?

In practice, the duty would require owners and occupiers to take steps to manage the populations of deer that use their land in a collaborative manner.

To assist deer managers in understanding, planning and delivering sustainable deer management, a code setting out the principles and practicalities would be developed. The code would cover management at both individual estate and deer management group (collaborative) level. This would provide clarity of expectations for deer management and

obligations on owner/occupiers, articulating the public interest. The code would emphasise the need to collaborate, and could potentially provide means for securing cross compliance and better integration with other land uses.

5) How would the relevant authority judge if the duty was being discharged?

It is likely that individual owner/occupiers managing deer in accordance with the code of practice outlined above would be deemed to be discharging the duty. Where voluntary deer management groups exist, are working effectively and in line with the code practice, the duty would be deemed as being discharged.

Ongoing, regular liaison with agency staff that provide advice and support to individual deer managers and deer management groups would continue. This process of engagement would highlight where there were concerns of non-compliance with the code, both on an individual estate and collaborative basis.

Other indications that the duty was not being met could include a deer management group being unable to resolve neighbours' conflicting objectives; changes in the status of designated sites from favourable to unfavourable discovered through the programme of site condition monitoring; and emerging public safety issues such as increasing deer-related road traffic accidents.

6) How would the duty be enforced? What would the consequences be if the duty was not being met?

The consequences of the duty not being met would be to trigger the compulsory planning system (for detail, see next section 'Compulsory deer management planning').

7) What about small landowners? Will gardeners have to cull deer in their gardens?

The details of which landowners are affected would be set out in the code and further clarified through the consultation process. However, it is envisaged that the duty would be limited to those with significant land holdings where collaboration is required to secure the public interest. There will not be an expectation that gardeners or smaller landowners would be obliged to manage deer.

8) Will this increase costs to landowners/occupiers?

There should be no additional costs to those land managers already managing deer in line with the code of practice, but there will be additional costs for those who are not.

Effective collaborative deer management could lead to some cost savings as well as fewer costs through damage to other land management interests such as forestry.

Advice and financial support to deliver the public interest will still be available from public agencies and programmes such as the SRDP.

9) Are there any other similar sorts of legislative duties that this can be compared to this duty?

The special nature of deer has been recognised in separate legislation for sixty years.

We are not aware of any directly comparable duties on land managers. However, parallels can be drawn between the duty proposed and the access duties imposed by the Land

Reform (Scotland) Act 2003 and the duty to control rabbits¹. The former requires that a land owner must manage land responsibly for access². As with the proposals for deer management, this duty is clarified through a code, the Scottish Outdoor Access Code. In this way, the access legislation requires land managers to manage land for public benefit.

10) How does this duty relate to the current mechanisms for managing deer as a common resource?

The proposals that DCS has made to change the deer legislation are designed to improve the management of wild deer as a common resource at a local level, taking account of the changing public interest.

The current legislation is designed primarily to balance sporting interests with the protection of agriculture and forestry, and to prevent deer-related damage.

DCS' proposals seek to put in place a more flexible and devolved system that balances a wider range of public and private interests, and does not rely so heavily on demonstrating that damage has occurred.

Compulsory deer management planning

11) When would compulsory powers be used?

Compulsory measures would be considered where the voluntary system is failing to deliver the code of practice. Examples of this include where owners cannot resolve their conflicting objectives, or where they cannot resolve issues such as the condition of designated sites, or where deer are continuing to pose a risk to public safety.

We would anticipate that these powers would be used rarely, and that in many circumstances, the threat of compulsory planning would encourage the resolution of issues through the voluntary system.

12) Is the compulsory planning system proposed not just the same as a Control Scheme in the current Act?

No. Unlike the complex compulsory control scheme, the proposed new compulsory planning mechanism provides clear, credible backstop powers, supported by a code to clarify expectations. This new approach should ensure effective, devolved local deer management plans are agreed and implemented, and should provide greater local ownership of the plan rather than a compulsory control scheme imposed from above by DCS. This would help to deliver the public interest better than the current arrangements.

13) How many compulsory plans do we think would be needed each year?

Very few. The circumstances which will lead to the requirement for a compulsory plan will only be realised when all elements of the voluntary system have been explored and have failed to deliver a solution.

¹ Through an order under section 1 of the Pests Act 1954, creating a rabbit clearance area, occupiers are required to shall take such steps as may from time to time be necessary for the killing or taking of wild for the prevention of damage by those rabbits

² Section 3, Land Reform (Scotland) Act 2003

14) How would compulsory planning work in practice? Can we force people to be involved?

DCS would serve an order on a group of land managers to prepare a plan by a certain date. The order would specify the issues and area to be covered, and who needed to be consulted in its preparation. If the plan was not satisfactory, DCS would have the power to prepare and enforce the plan.

There will be some owners and occupiers who choose not to be a part of a deer management group, or who do not wish to engage with the development of the plan. We would seek to encourage participation, and development of the plan in itself provides the incentive for participation as there will be management consequences for those failing to be involved (ie a lack of say in how the plan will be delivered).

It would be appropriate to create an offence to wilfully obstruct the delivery of a compulsory plan, similar to the offence in section 13 of the 1996 Act in relation to control schemes. It is intended that where an owner/occupier refused or was unable to meet the requirements of a compulsory plan, DCS would have the power to take the action necessary and recover the costs.

15) Who will draw up a compulsory plan?

The plan could be drawn up by the group themselves and by agency staff (where there is no conflict of interest in land ownership or management³), but it anticipated that in most cases some external expertise would be required. The plan would have to go through an approval process to ensure that DCS was satisfied that the plan would allow the achievement of sustainable deer management and that all relevant interests had been consulted. If the plan was not satisfactory, DCS would have the power to prepare and enforce the plan.

16) How much will it cost to draw up a plan and how much to implement?

For those compulsory deer management plans that would require the input of an external facilitator there would be some additional, albeit modest costs to government. The costs for developing a compulsory plan would be comparable with the rate of payment for developing grazing management plans that is currently proposed within the SRDP. These costs are based on daily rates for consultants and the actual cost would vary depending on the scale, complexity and numbers of relevant parties involved.

17) Will this cost more than the current system of voluntary deer management groups, underpinned by voluntary control scheme and joint working on designated sites?

Funding for the current system comes mainly from land managers (both private and public) supported by contributions from the public agencies, and to a lesser extent funding from the SRDP. It is not expected that this will change to any great extent, but in order to secure the public interest more effectively than the system currently does, it seems reasonable to assume that additional funding may be drawn down through SRDP by deer managers in the future.

³ i.e. it may not be appropriate for the staff of an agency to be involved in facilitating a plan which the agency would become a party to by virtue of being the landowner

18) Would this mean the end of voluntary deer management groups and planning?

At the core of the suggestions for change is the recognition that where effective, voluntary deer management groups should remain the foundation of deer management in Scotland. Only where the voluntary approach is failing to deliver public benefit or where voluntary deer management groups do not exist would compulsory deer management planning be invoked. Indeed, having compulsory planning powers available as a last resort should secure greater buy-in to the voluntary system.

19) What about urban deer or places where is no deer management group? How would panels operate to ensure that issues are dealt with?

The spread of deer into more urban areas is a key concern, and any new legislation must be able to tackle the issues raised by deer in and around communities, as the expansion of woodlands and lack of effective management can lead to increases in numbers, particularly of roe deer, with associated problems of damage to gardens, cemeteries etc. In and around towns and cities, land holdings are often smaller than in more upland areas, and less land is managed for sporting purposes. This can make the effective management of deer harder to achieve. The issues raised are significantly different from those in the open range, as are the deer species involved.

Rather than impose upland style deer management groups in these areas, a panel approach is proposed. An analogous approach, which DCS has already used successfully in localised road traffic accident hotspots, involves the setting up of a time-limited formal panel that is required to develop and deliver a deer management plan. This approach would be expanded to facilitate the deer management planning and delivery required without setting up a system of permanent deer management groups.

DEER WELFARE

Welfare and the current system

20) What is meant by 'deer welfare'?

The industry-agreed Best Practice guides⁴ sets out the context: deer, as all mammals, can experience pain, fear, hunger and other stressful states. At an individual level, deer welfare can be assessed from observations of the deer's:

- physical state (eg presence of painful diseases, injuries, emaciation)
- unusual behaviour (eg social position within the herd, an individual staggering, an individual holding head down)

In the context of culling, concern for wild deer welfare includes a requirement that deer are culled in a way that minimises impact on their welfare. The shooting of deer is not a welfare issue in itself if Best Practice is followed. In practice this means making sure that a deer being culled is done so in a quick and humane way defined in Best Practice as ensuring that the animal dies within 5 minutes of being shot.

Welfare implications can also arise as a result of orphaning dependent juveniles or may be affected by management decisions, such as excluding deer from preferred wintering grounds by fencing⁵ or excessive culling pressure.

21) Does animal welfare legislation apply to deer?

The Animal Welfare (Scotland) Act 2006 only applies to wild animals which are under the control of man, so although this Act applies to captive deer, there is normally no legal responsibility for those who manage wild deer to ensure that their welfare is considered. Similarly, at the moment there is no legal responsibility for those who do not manage deer for any welfare issues that may arise by their lack of management, for example where a lack of management over time leads to there being more deer on an owners' land than the land can support, leading to welfare concerns such as starvation or increased diseases and parasite burdens.

The Wild Mammals (Protection) Act 1996 does apply to wild deer, and makes it illegal to carry out a number of actions⁶ with the intention to inflict unnecessary suffering. These specific acts of cruelty have proved difficult to prosecute to date.

22) What are the current concerns about deer welfare?

Scotland's wild deer are seen by the public as being among our most iconic species, and are a nationally significant economic resource, supporting jobs and businesses, particularly in remote rural areas. While some sections of the public feel that deer should not be culled at all, most understand that some culling is a necessary part of deer management for population control.

Deer welfare is an issue 365 days a year. The ultimate responsibility for ensuring the welfare of deer being shot will always lie with the person undertaking the shooting. DCS is aware of a range of current welfare issues in relation to shooting, some of which have

⁴ See [Best Practice Guides Home Page](#) and [Best Practice Guides Welfare Definition](#)

⁵ More detail can also be found at [DCS Website Welfare Front Page](#)

⁶ Section 1 - any person who mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates any wild mammal with intent to inflict unnecessary suffering commits an offence

been reported in the national media. The reporting of these incidents, and the response, makes it clear that the public expect high standards of welfare to be employed in managing deer. Alongside those reports that have appeared in the press, DCS has received reports informally from deer management groups, representative bodies and concerned individuals. Where appropriate these have been followed up by reporting to the relevant authorities, but in many cases the evidence has been anecdotal and long after the event.

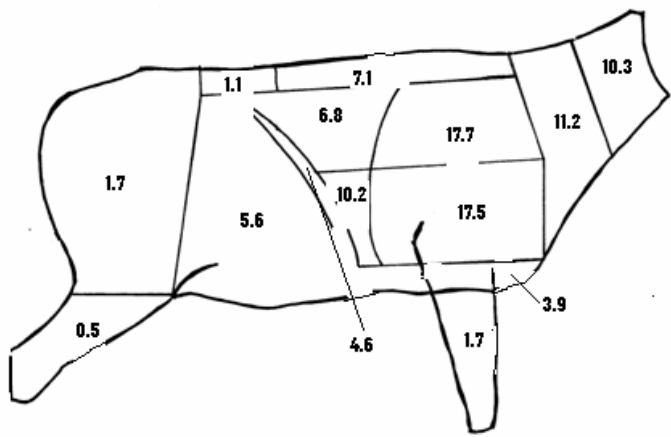
23) Aren't all these concerns about illegal killing of deer (poaching), which already have penalties set in law?

While issues in relation to poaching or to the illegal hunting of deer with dogs have had a high profile in the press recently, welfare concerns in relation to shooting have been raised in relation to the activities of 'legal' deer managers. Examples raised are in relation to the culling of female deer at inappropriate times of the year, particularly when this has led to calves being orphaned when still dependent. Incidents near Braemar in 2008, for example, led to extensive coverage⁷ where hinds were reported as being shot out of season through occupiers' rights⁸, at time of year when there was a high probability of dependent calves being left to starve.

Other issues of welfare concerns include where there is an unacceptable time to death of deer. An example of this would be deer which have been shot more than once, because the first shot was misplaced and failed to cleanly kill the animal. Not all deer shot and wounded are recovered. The welfare concern is that the deer will have been suffering for a longer period than if despatched cleanly and quickly or may suffer consequential death from a non-fatal wound leading to starvation or infection.

A study in 2003 by Urquhart & McKendrick⁹ examined the wound tracks of 900 carcasses. This found that 43% of shots were outwith the recommended area of optimal shot placement and thus potentially of welfare concern. The results are summarised in this diagram:

Distribution of wounds (%) in 900 carcasses
 Of 943 carcasses, 900 had one or more wounds
 Average number of wounds per carcass = 2.2



⁷ For example see Daily Mail, June 18th, 2008 "Gamekeepers on the estate bordering Balmoral have been forced by their employer to shoot and disembowel pregnant deer. In some cases the fully formed fetuses were still alive when their dead mothers were 'gralloched'. The out-of-season cull of 40 red deer was ordered by Invercauld Estate. The keepers involved are said to be 'sickened' by the task. Now the Scottish Gamekeepers Association (SGA) has asked for a meeting with Environment Minister Mike Russell to discuss the culling of deer out of season."

⁸ Section 26(1) and (2) of the Deer (Scotland) Act 1996

⁹ Urquhart and McKendrick (Vet Rec. June 28, 2003)

24) What is the scale of the deer welfare issues?

It is not possible to give absolute figures for the scale of deer welfare concerns. DCS does not necessarily believe that these are increasing, but there is concern that with increasing numbers of deer requiring to be managed (particularly around towns), these issues will become more prominent, and the review of legislation therefore recommended that action be taken now to instil confidence.

The following is a list of the types of recent incidents which have raised concerns over deer welfare:

Welfare scenario	Impact
Killing sexually mature females when calves may still be dependent	<ul style="list-style-type: none">• Calves are not always beside the mother• Calves left to starve or die from dehydration• Calves open to increased predation• Calves disorientated and subject to acts of cruelty.
Shooting females and not killing the calves that are weaned.	<ul style="list-style-type: none">• Red, sika and fallow are a social/herd animal and dependency by calves on adults goes beyond the period of weaning. Hence:• Increased likelihood of starvation,• Increased likelihood of dying from exposure
Unacceptable time to death	<ul style="list-style-type: none">• Causing unnecessary suffering

25) Is there evidence of a risk to public safety from firearms used in deer stalking? Isn't this already addressed through the firearms certification?

There is some evidence of a potential risk to public safety. There have been three fatalities associated with the use of rifles in Britain in the last 4 years (2 related to night shooting and one other relating to accidental discharge), at least one additional serious accident at Kinloch Rannoch where someone was shot and injured, and reported accidental discharges while stalking on Forestry Commission land.

The current system of firearms certification only examines an applicant's fitness to be granted a firearms certificate and the arrangements to store a firearm, rather than their competence to use it. This gap in competence has been addressed in an ad hoc way, through the development of the range of deer management qualifications, which are now required, for example, by the FCS, and through the development of DCS Fit and Competent Register. More detail on this is provided below.

The increasing need for control of deer in and around towns will result in a greater spotlight being placed on deer management, and it is reasonable to assume that the public will expect that such management would only be carried out by skilled stalkers and deer managers. Under the current legislation, stalkers are not required to undertake any formal training, and only have to meet the firearms criteria of not being of unsound mind, intemperate manner or historically a danger to the public.

The deer control work on Mugdock Country Park, just outside Glasgow, has shown that implementing lethal control requires the decision makers (in this case local authorities) to have a high level of confidence in the competence of the controllers.

26) How would the proposal to require adherence to a code of practice and/or the demonstration of skills and knowledge address these risks?

The current systems to assess skills and knowledge have developed over time in an ad hoc way, and are not universally applied to all who shot deer. They therefore have limitations, for example that there is no requirement for a test or demonstration of competence for those who shoot deer in the open season; there is no requirement for a test for those circumstances and individuals who are exempt from having to apply for Authorisation for out of season shooting from DCS; there is a lack of formal training or assessment of 'night shooting' skills; and there are inconsistencies between existing methods of assessment¹⁰.

DCS' work with stakeholders¹¹ has defined competence as covering public safety, food safety and deer welfare. The proposal to have a requirement that all who shoot deer have undergone a practical assessment of their skills and knowledge to ensure that they understand and are capable of discharging their responsibilities in terms of public safety, food hygiene and deer welfare, supported by a code of practice, would rationalise the current disparate system. It would provide a minimum standard through the assessment, and ongoing clarity of safety, welfare and hygiene through the code of practice.

27) What do the public think about deer welfare/deer management?

There is limited information about this at this time. DCS is planning to scope work during 2009 to help understand public attitudes to deer and deer management, which is likely to include their expectations for deer welfare and the qualifications of those managing deer.

A public survey in 2007 and a study by SNH in 2008 showed that the Scottish public strongly associate deer, particularly red deer, as an iconic species¹², indicative of Scotland's wild land and natural heritage¹³.

DCS Authorisations

28) In what circumstances is it possible for someone to shoot deer at the moment?

Under Scots law, while wild deer are not owned by anyone, the right to take deer rests with the owner or occupier of the land that the deer are present on. This right to shoot during the open season during the day can therefore be exercised by the owner, occupier or those with their permission, providing that the relevant firearms legislation is adhered to. There is no requirement for authorisation for this activity.

¹⁰ See [DCS Report on Limitations & Costs of Current Methods to Assess Competence July 2007](#) for further information

¹¹ See [Feedback on DCS Seminar on Welfare & Competence November 2007](#)

¹² Scotman vote for Scotland's iconic species, 2007

¹³ SNH commissioned Report No 291. '[Public Perceptions of Wild Places & Landscapes in Scotland](#)' (2008) – 31% of Scottish residents categorised 'wildlife' as the feature or characteristic that made an area wild. Deer/stag was the most widely mentioned species in the breakdown of specific answers.

29) In what circumstances does someone have to apply for authorisation from DCS under the current legislation?

Authorisations are issued by DCS under the Deer (Scotland) Act 1996 and allow individuals to cull deer in circumstances when they would not normally have the legal right to shoot them.

Authorisations are required in the following circumstances:

- during the close season - an authorisation may be given to prevent deer damaging natural heritage, to prevent damage to unenclosed woodland or in the interests of public safety
- at night - the shooting of deer is not permitted between one hour after sunset and one hour before sunrise. Authorisation may be given to allow night shooting on woodland or enclosed agricultural land
- in emergency circumstances where deer are constituting a danger to public safety
- where deer control is needed on land belonging to someone else - the right to shoot deer belongs to the owner of the land or those permitted to do so by the owner. In certain unusual circumstances it may be necessary to shoot deer on someone else's land without this permission, and authorisation is required to do this.
- to drive deer with vehicles in order to cull them.

Authorisation to shoot deer out of season is not required by owners or occupiers of agricultural land or enclosed woodland. These owners/occupiers can shoot any species or sex of deer at any time of year if they consider that those deer are causing damage to crops or enclosed woodland.

30) How many authorisations does DCS issue every year?

Authorisation type	No. issued 2006-07	No. issued 2007-08
Night shooting Section 18(2)	165	179
Out of season at request of occupier Section 26(2)	42	1
Out of season to protect unenclosed woodland, the natural heritage, or public safety Section 5(6)	55	61
Out-of-season for research purposes Section 5(7)	0	1
Emergency powers Sections 10(2) & (4)	12	2
Total	274	244

31) What is the DCS register of fit & competent controllers?

Under section 37 of the Deer (Scotland) Act 1996, DCS is required to ensure that an individual who is controlling deer under an authorisation or approval is fit and competent. DCS introduced a new system, the Fit and Competent Register, in 2004/05 in order to establish a more robust means of ascertaining the fit and competent status of controllers.

32) Who does not need to be on the register?

Those culling deer during the open season during the day are not required to be on the register, as they are not required to seek authorisation. In addition, where deer are causing or likely to cause serious damage to enclosed woodland or agricultural land, the owner, occupier or their employees can cull deer in the close season without authorisation under section 26 of the Act, and therefore do not need to be on the register.

33) How does DCS judge if someone is fit and competent?

DCS accepts a Deer Stalking Certificate Level 2 Qualification (DSC2) obtained within the last five years as providing evidence of being fit and competent. Those without a DSC2 can apply by providing two referees, who have confirm that the applicant is fit and competent to cull deer and provide details of the applicant's understanding of relevant Best Practice. The referee also has to give details of their own relevant qualifications and/or experience and confirm that they themselves are familiar with, and follow, relevant Best Practice associated with the culling of deer. DCS work on the gaps and limitations of the current system¹⁴ recognised that the current emphasis of the Fit & Competent Register, when using the referee route, is on assessment of knowledge as opposed to testing ability.

If a potential controller is not able to provide two suitably qualified referees, a member of DCS technical staff can visit with a view to assessing for fit and competence, which will be done by questioning the applicant on aspects of the appropriate published Best Practice guides.

34) How many people are on the F&C register currently? How many new applications do we get a year?

There are currently around 800 people on the F&C register, out of an estimated 20,000 who stalk in Scotland each year. Of these 20,000 in total – it is estimated that around 10,000 live in Scotland, 8,000 come from other parts of the UK, and over 2,000 from overseas. The trend in new applications is difficult to determine, as the register was implemented to replace ad hoc assessment of fit and competent in 2004/05. It is likely that there will be a tail off in applicants over the next couple of years.

35) How much does it cost to administer each year? How much for each new controller?

Approximately 2,800 man hours (1.8 fte) are spent processing all authorisations each year by DCS. This is split equally between Band A administrative staff and Band B technical staff. When using the referee system it current takes 3 man hours per controller going on to the Fit & Competent Register.

¹⁴ [DCS Report on Limitations & Costs of Current Methods to Assess Competence July 2007](#)

New proposals

36) How would someone be judged to have the skills and knowledge required?

Our current thinking is that the skills and knowledge to be demonstrated would be described through the industry agreed standards at National Occupational Standard level 2. This would include demonstrating killing a deer.

There are a number of different assessment methods already in place that are used by certain sections of the deer sector that would be acceptable. The key is to ensure the deer sector itself offers varied yet simple and low cost assessment opportunities and it would therefore be encouraged to develop additional assessment routes as necessary.

The varied assessment routes currently available are described in the DCS report on the limitations and costs of current methods to assess competence. This highlights that whilst there are a number of methods which currently assess competence, there are gaps in what these methods assess and who they assess.¹⁵

A register would provide a simple single access point for authentication of differing assessment routes. The introduction of the register would be phased in over a number of years.

37) How would we recognise the skills and knowledge of existing stalkers?

Currently 'accepted' qualifications such as those described above delivered through DMQ Ltd, LANTRA AWARDS, SQA, ST Huberts Club etc that met the agreed standards would be acceptable. Whether 'grandfather rights' (ie many year's practical experience) should be accepted could be a matter for public consultation. However, the evidence presented above highlighting current welfare concerns suggests that skills levels among some experienced practitioners are lower than desired.

38) How would training be delivered?

Current proposals do not dictate that training should be compulsory. All that is demanded is that individuals are able to demonstrate the skills and knowledge required to kill deer competently. Where individuals wished to obtain training this would be provided by the deer sector which has a well-developed training programme.

39) How much might training cost?

Current costs vary depending on the depth of the course. Current prices range from £80 (1 day) to £280 (3 days).

40) How many people do we think would be on a new register?

It is estimated that 20,000 individuals go stalking in Scotland. Only those that were stalking unsupervised or who supervise others would be required to be on the new register and this is estimated to be 8-10,000. Of these, less than 1,000 are from outwith the UK, and mostly from countries which have an existing hunting qualification that could be acceptable.

¹⁵ [DCS Report on Limitations & Costs of Current Methods to Assess Competence July 2007](#)

41) How much would this cost DCS to administer each year?

We estimate that it would cost 0.75 fte at Band A (administrative staff) to administer the register. DCS already administers the Fit & Competence Database described above which would be replaced by the Register. As the introduction of the register would allow for the deregulation of authorisations the proposal would result in a net saving to DCS.

42) Why not go down a voluntary register approach?

A voluntary register approach would be reinforcing the current status quo which does not address the concerns relating to welfare raised above. Additionally, the voluntary uptake of qualifications has been largely limited to a defined section of the deer sector, the recreational stalker. Uptake from crofters and farmers is poor.

43) Could this approach be extended to SNH's licensing functions?

Yes. As part of the proposed merger negotiations discussions have already started on bringing together the DCS authorisation process and the SNH licensing functions.

44) What would happen if someone judged to have the skills and knowledge was shown not to apply high welfare or safety standards?

The intention would be that they were removed from the register. The detail of this process is still being discussed but could involve DCS setting up a panel to address the concerns, or the original assessing body making a judgement. The latter already exists in principle through the Deer Stalking Certificates issued by DMQ Ltd.

45) Doesn't the firearms certification process already test skills?

No. It simply requires the candidate to assure the Chief Police Officer that they are not of intemperate manner, are of sound mind and not a danger to the public. There is no assessment of application of skill.

46) How do we address the welfare issues of deer close to centres of population?

Increasingly DCS is dealing with deer management issues in and around towns. Deer can be controlled effectively in high population density areas. It is likely however that public opinion will require robust assurance that deer are being shot by competent individuals and not simply anybody that may happen to have a firearm.

Circumstantial evidence is beginning to highlight how active stalking pressure in these areas around towns can reduce deer density and may as a consequence be reducing the risk of road traffic accidents.

Close Seasons and night shooting

48) What are the proposals on Close Seasons?

The proposals do not involve changing the primary legislative position that Ministers can set a close season for male deer and must set a close season for female deer. However, it does recommend that once collaborative deer management involving all relevant interests has become firmly established, and once other aspects of reform like competence have been implemented, a phased removal of the Close Season for male deer and a more focused Close Season for female deer to protect dependent juveniles

could be introduced. An element of local male season setting could remain, to allow variation for local circumstances. These measures in turn would allow the simplification of the current system of authorisations while providing better protection for dependent young by removing the right of owner occupiers to shoot out of season.

47) Does this mean declaring open season on male deer in Scotland?

No. Any changes would be phased in once the other elements of reform were in place to protect deer welfare by the demonstration of skills and knowledge and to better support collaborative local deer management. Such changes would require changes to secondary legislation, which the Scottish Parliament would need to consider and approve. Power to set a local male season would be retained, to allow decisions about resource management to be made at a local level.

48) Will this lead to over exploitation of stags and a reduction in the hind cull?

No. Changes to the stag close season would only be brought in after the introduction of a duty to manage deer sustainably and the measures to allow compulsory deer management planning were in force. Thus, if there was concern that the local voluntary approach was leading to over-exploitation, the proposals described at question 11 would be enacted.

49) Aren't the proposals on night shooting encouraging deer to be shot at night?

No. The proposals are not designed to widen the use of night shooting. Those undertaking night shooting will require to have demonstrated that they have the skills and knowledge required to shoot at night and an endorsement added to the register. Night shooting will still be subject to adherence to a Code of Practice, which includes the requirement, for example, to inform local police of the time and location of any night shooting. All the proposals will do is simplify the procedure by authorising a controller for night shooting rather than authorising each location. The same conditions that allow night shooting to be undertaken currently will remain. Night shooting will still not be permitted on the open hill.

50) How does an offence of 'recklessly driving deer' differ from the current offence?

It is currently an offence under section 19 for any person to use a vehicle to drive deer with the intention of taking, killing or injuring the deer. It is therefore not an offence to drive deer with a vehicle with the intention of taking deer alive or in order to film the deer. DCS can issue an authorisation to permit the driving deer for deer management. Such authorisations are very rare, with the last issued over 5 years ago. The suggested change will move attention from the purpose of driving deer to the way that it is done and thus will afford deer better welfare protection.

51) Do the proposals encourage stalkers to use vehicles to drive deer to guns?

No. The proposals simply seek to better assure animal welfare while they are being driven for what ever purpose.

52) What impact would these changes have on owner-occupiers?

Owner-occupiers will be able to shoot deer throughout the year as they currently do, providing they have demonstrated the necessary skills and knowledge, with one exception - the period when there is a high risk of orphaning dependent young. During this period any taking or killing of adult females would require to be authorised by DCS. The authorisation would only be granted in exceptional circumstances where there was a significant risk of loss to property, crops or public safety.

53) Does that mean more bureaucracy for farmers, crofters and foresters?

No. The period over which any authorisation would be required to shoot adult females would be relatively short, most likely covering the summer months only. Due to the high risk to deer welfare it is envisaged that the number of authorisations approved during this period are likely to be limited. Where required the authorisations would be processed quickly.

54) What is wrong with the current system of cull returns?

It is limited in its coverage and so does not provide information that is useful for deer management at either a local or national level. We estimate that the current system records 90% of red; 70% of sika; 95% of fallow; 50% of roe.

55) Who would administer an annual return for those on the register?

This has yet to be decided. The register could either be run nationally or at a local level for different parts of the country.

56) How would this work for those not on the register such as supervised clients and those coming from overseas?

The principle behind the proposal is that details of all deer shot in Scotland should be recorded so that this information is available to inform deer management. This would have to include deer shot by supervised clients and overseas stalkers. A system will need to be developed to achieve this effectively with minimal bureaucracy.

57) How much would it cost?

We envisage that the submission of returns would, as at present, be free.

**DCS
June 2009**