

Deer Commission for Scotland

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Michael Russell MSP
Minister for Environment

13th January 2009

Dear Minister

Review of Deer Legislation in Scotland

This letter and Annexes provide a package of advice from the Deer Commission for Scotland on changes to legislation and policy on wild deer that take into account the changing circumstances of land management in Scotland, and which would help deliver the objectives of the Scottish Government's new wild deer strategy, 'Scotland's Wild Deer – A National Approach'. These objectives are for a high quality, robust and adaptable environment, sustainable economic development and social well-being. The proposals take into consideration the specific concerns you raised in the summer of 2008 in relation to deer welfare as well as concerns raised by stakeholders in the consultation on the merger of DCS and SNH. They build on the findings of the DCS Consultation on the Close Seasons in 2005 and subsequent work.

As you requested in June 2008, DCS has reviewed the current legislation and considered possible changes to the Deer (Scotland) Act 1996. During this process DCS has worked with partners in SNH and FCS, and has also discussed emerging ideas with a range of stakeholders, both through bilateral meetings and at the Deer Management Round Table. The DCS Board agreed the main recommendations in a meeting open to the public at the start of December 2008.

DCS believes that there is a strong case for change to the current legislation as it is in need of significant reform. In particular, DCS recommends change in the following areas:

Local Collaborative Deer Management

- To strengthen the existing voluntary approach, clarify expectations on deer managers, and provide a new backstop power where this fails.

Deer Welfare

- To make it a requirement on all who shoot deer to demonstrate adequate skills and knowledge in order to protect deer welfare, public safety and food hygiene.

Once these new measures are in place, some of the existing regulatory provisions could be reduced or removed, including those relating to the Close Seasons, authorisations and exemptions for owner-occupiers. The DCS Board has agreed a set of detailed recommendations to deliver these proposals. They are contained in Annexes D and E (in tabular form) to this letter. In addition Annex A provides an executive summary, Annex B provides the background to the current

legislation and the deer sector in Scotland, Annex C describes the options explored by DCS and Annex F provides links to supporting documents.

Some stakeholders have strongly held views on a number of the issues discussed in these papers. DCS has tried to take these views into full account in providing an appropriate balance between private rights and the public interest but, given the short timescale for the preparation of this advice, further involvement and discussion with stakeholders by the Scottish Government will be necessary.

I invite you to consider the advice on changes to the deer legislation outlined above and set out in more detail in the enclosed annexes.

Yours sincerely

Professor John Milne
Chairman

Papers Attached

The papers attached contain the following sections:

- Annex A Executive Summary
- Annex B Background
- Annex C Options for change
- Annex D Recommendations
- Annex E Summary of recommendations
- Annex F Links to supporting documents

EXECUTIVE SUMMARY

1. During the period August – December 2008 the Deer Commission for Scotland reviewed the current deer legislation at the request of the Minister for Environment, Mike Russell MSP. This set of papers offers consideration of the legislation and suggestions for changes which DCS believes would update and adapt the legislation against the context of changing land management in Scotland to help deliver the key objectives of the Government's strategy 'Scotland's Wild Deer: A National Approach'.

Outcomes

2. In developing these proposals DCS has been guided by the need for the following outcomes:
- Delivery of the Scottish Government's National Performance Framework and the Strategy for deer 'Scotland's Wild Deer: A National Approach';
 - Enjoyment of existing rights to take deer only constrained by a responsibility to safeguard the public interest and to collaborate with others in the sustainable management of the common deer resource;
 - Reassurance of the general public about deer welfare, public safety and food safety standards;
 - Decision-making devolved to a local level and made more inclusive; and
 - A deer sector able to adapt to future challenges such as climate change.

Principles

3. In addition, we have also been mindful that the proposals should seek to balance the following principles as expressed by stakeholders:
- Reducing bureaucracy on individuals and businesses;
 - Linking the private right to shoot deer to a responsibility to safeguard the public interest;
 - Empowering landowners, who have the rights to shoot deer, to fulfil their responsibility for managing a common resource in a collaborative manner;
 - Promoting responsible deer management;
 - Devolving deer management wherever possible to a local level that is locally led and responsive to local conditions and minimising government intervention;
 - Making deer management more inclusive and closely linked to natural resource management;
 - Employing a risk-based approach to public intervention - focusing public intervention where the risk to public interest is greatest;
 - Raising standards among those who shoot deer and manage a natural resource;
 - Delivering an equitable balance between public and private interests;
 - Integrating deer management with other land uses; and
 - Maximising the return on taxpayers' investment.

Changing context

4. There have been a number of changes in context since the Deer (Scotland) Act 1959 on which current legislation is based. For example:
- A much more complex and diverse pattern of objectives of landowners and land use;
 - A larger population of deer of all four species with an expanded range;
 - Greater emphasis on aspects of the public interest which need to be delivered; and
 - A desire for wider involvement of other interest groups in deer management planning.

Key findings

5. *Case for change in legislation*

- The review of the current legislation has highlighted a number of weaknesses. In particular, there is a lack of incentive for managers to collaborate; there is no mechanism to resolve serious conflicts between private interests, which arise frequently; the current system of Close Seasons does not adequately protect deer welfare; the exercise of owner occupier rights to shoot deer out of season without authorisation has led to welfare concerns; and there is a lack of credible and appropriate back-up powers to protect the public interest.
- Public agency partners and the deer sector agreed a common vision for the future of deer management in Scotland in 'Scotland's Wild Deer: A National Approach', published in November 2008. This vision is for a high quality, robust and adaptable environment, sustainable economic development and social well-being with a number of effective mechanisms to ensure delivery of the vision. This recognised the multiple benefits that society and private owners wish land and wildlife in Scotland to deliver.
- The deer sector has developed significantly in the last 5 years, for example by an increasing emphasis on skills and training, agreeing a set of Best Practice Guides, and a wider acceptance that deer management needs to change in order to deliver the favourable condition of most features on designated sites.
- There is broad agreement however that without legislative change recent progress will be undermined and the current legislation will become a barrier to delivering this vision.

6. *Delivering change*

Changes in legislation and policy are required in two main areas:

Local collaborative deer management

- Joint working between DCS and other public agencies has delivered some improvements on sites designated for their natural heritage interest, primarily achieved through encouraging the voluntary principle. However this has been top-down intervention which may not yield sustained results.
- In areas without such designated sites, many deer management groups are unable to secure the co-operation of all owners in developing and implementing adequate deer management plans which take account of the public interest. This has adverse implications for deer welfare, natural heritage and public safety, as well of for the economics of sporting estate management and rural employment.
- A voluntary and devolved approach to deer management would be better supported through a duty on deer managers to manage deer sustainably, supported by a Code of Practice for local sustainable deer management covering aspects of collaborative planning, consultation and implementation.
- Appropriate and credible backstop powers of intervention are needed where the voluntary system is failing to protect the public interest. Existence of these powers will provide an incentive for deer managers to work collaboratively.
- Such intervention could take a number of forms, and must balance the public interest with the need to devolve decision-making and avoid unnecessary bureaucracy.

Deer Welfare

- Concerns have been raised about specific instances where deer welfare may have been compromised. Overall it is difficult to quantify the standard of deer welfare across the country. The existing system of voluntary assessment of skills and knowledge, Close Seasons, authorisations and exemptions needs to be strengthened to provide a more robust reassurance to the general public. For example, those authorised by DCS as being “Fit and Competent” account for only 6 % of the annual cull of deer.
- Only those who have demonstrated the necessary skills and knowledge should be allowed to shoot deer unaccompanied, with some obligation to maintain standards thereafter.
- Current owner-occupier rights would be replaced by a requirement to obtain an authorisation to take deer in the Close Season.

Deregulation

- Once a system of assessment of skills and knowledge, and improvements to local collaborative deer management described above are in place, deregulation of the Close Seasons and most of the process of authorisations can be brought in.
- Welfare concerns are highest for females with dependent young. Stricter controls on shooting them in the period of highest juvenile dependency should be introduced through a shorter Close Season.

7. *Conclusion*

- DCS believes that this package of measures provides the basis for a modern approach to the management of Scotland’s common deer resource that is proportionate to the value of the public interest. Taken together, this package of measures provides an appropriate balance between standards, regulation and flexibility; and will bolster public confidence.
- Some of the recommendations are likely to be contentious as they entail significant change, particularly the introduction of an assessment for all who shoot deer, and the removal of owner occupier rights and the national Close Season for male deer. Some of these concerns can be overcome through a phased introduction and stakeholder involvement in developing the details of implementation.

BACKGROUND

1. This paper describes the background to the current legislation and deer sector in Scotland, and presents the case for change.
2. This paper makes a number of references to the public interest in relation to wild deer. This includes environmental interests such as the condition of sites designated for their natural heritage interest, wider biodiversity, and carbon sequestration; economic interests such as jobs in tourism and venison processing; deer welfare; and social interests such as public safety, food safety, and public amenity.

The Legal Framework for Deer Management in Scotland

3. With no natural predators in Scotland, wild deer populations will tend to increase in numbers and range, because food and other resources are not limiting. Deer need to be managed because of their interaction with other land-use and management objectives. Their distribution and numbers have the potential to impact adversely on natural habitats, public safety and the economic value of woodlands and agricultural crops. The public of Scotland see red deer and roe deer as iconic animal species, and are likely to view natural winter mortality as being an unacceptable method of population control. In practice this means that deer numbers are managed in order to allow other land management objectives to be achieved and to protect deer welfare.
4. The significance of red deer as a species is illustrated by the fact that there were seven official inquiries into the problem of their control between 1872 and 1954, culminating in the Deer (Scotland) Act 1959, which (amended in 1996) still forms the basis of legislation on deer management today. Meanwhile there has been an expansion in the range and numbers of the other three species of deer found in Scotland; roe, sika and fallow deer with each species raising its own mix of issues.
5. The legal framework for wild deer management under Scots law flows from the principle that wild deer are not 'owned' as such, but the right to take or kill rests with the owner or occupier of the land. This is a different model from many other European countries. Deer management is carried out by a range of land managers on estates, forests, farms, crofts, and publicly-owned land with costs borne either directly or through income mainly derived from recreational sport stalking.

Public and Private Interests in Deer Management

6. Managing wild deer can impact on, and contribute to, a wide range of public policy objectives (together referred to as 'the public interest') relating to rural economic development, natural heritage, environmental quality, river catchment management, climate change, tourism, transport, public health, public safety and well-being, public access, and protection of animal welfare. Deer are also managed for private interests, including (separately or in combination) for sport, conservation and to protect agricultural or forestry crops. Recent figures (*The Contribution of Deer Management to the Scottish Economy* (2006) PACEC) show that deer management contributes £105 million to the economy, supporting over 2,500 full time equivalent jobs, often in economically fragile rural areas. The PACEC report also stated that deer are unusual in the sense that they are viewed both as an asset and as a species that needs to be kept under control; and management for control and for sport largely go hand in hand. The report noted that wild venison production (some 3,500 tonnes of meat annually) is generally a by-product of deer management, although it produces a significant income stream.
7. The balance of public interests in deer management has changed over time, and is likely to continue to change as, for example, moves to a low carbon economy require the development of more tree cover and also require that carbon-rich soils are protected from damage. Previously,

balancing sporting interests with those of agriculture and forestry was the main concern, but now the environment, public safety and the welfare of wild deer have more prominence.

8. The deer sector comprises a complex and diverse range of interests with differing, and often opposing, management objectives. It involves both professional and recreational participants, only some of whom are governed by commercial concerns. This diversity makes it a difficult sector to regulate.

Working with the current legal framework

9. The Minister requested in June 2008 that DCS review the current legislation and submit proposals that enable better local collaborative deer management and better safeguards for deer welfare. The Government's strategy for wild deer, 'Scotland's Wild Deer: A National Approach', is now in place and the time is apposite to review whether the current legislative framework for deer management is fit to deliver this strategy. Alongside this, the report of the consultation on the proposed merger of DCS with SNH showed that among stakeholders there was a 'broad consensus that the deer legislation is archaic and would benefit from updating'. Furthermore, DCS has been undertaking research on key aspects of deer management and welfare since the conclusion of the Consultation on the Close Seasons in 2005.

10. Looking back to earlier opportunities for reform, in 2002 DCS was invited by the then Scottish Executive, in the Land Reform Action Plan to review the current deer legislation. In 2003 a report was submitted on the Deer (Scotland) Act 1996 to the then Minister, Rhona Brankin MSP, who responded that, while she recognised the complexities and difficulties created by the current legislation, limitations on Parliamentary time meant that DCS should further test the existing legislation and explore alternative options such as pursuing coordinated action with other public bodies to achieve environmental objectives.

11. DCS published a Consultation Paper on the Close Seasons on 29 October 2004. In total 1,193 responses were received. In summary, at the end of the consultation DCS concluded that:

- the Close Seasons do not in practice adequately protect deer welfare. Any owner or occupier who has deer on improved ground, or ground enclosed by a stock-proof barrier, can shoot deer in the Close Seasons without authorisation from DCS and without any need for DCS to be satisfied that they are fit and competent to do so. Consequently about two-thirds of deer shot in the Close Season are culled without an authorisation to shoot from DCS. The Close Seasons therefore do not prevent deer being shot but partially restrict who are able to do so, but with no reference to their skills and knowledge.
- deer welfare is an issue for 365 days a year. The ultimate responsibility for ensuring the welfare of deer will always lie with the person undertaking the shooting. Yet, less than 6% of all deer culled in 2003 were shot by persons who were required to satisfy DCS that they were "fit and competent" (as provided for in the Deer (Scotland) Act 1996); and
- any system of deer management needs to address wider objectives as well as deer welfare issues. DCS is charged with furthering the sustainable management of deer. In a sector with many different and at times conflicting objectives, a "one size fits all" approach, implicit in the Close Seasons, is unlikely to succeed. A system is needed with sufficient flexibility to facilitate local co-operation, negotiation and shared responsibility, whilst providing the necessary guarantees for deer welfare and public interests.

12. Since 2005 DCS has tested the use of Sections 10, 11 and 12 of the Deer (Scotland) Act 1996, dealing with emergency measures to prevent damage by deer, and the provision of direct support to land managers. Section 7 of the Act, which relates to damage caused by deer, has

been used to promote voluntary management agreements in combination with incentives from other agencies. However, because the focus of the Act on damage, it does not deliver on broader aspects of public interest, and is no longer fit for purpose.

13. To consider a number of weaknesses in the Act, a series of projects has considered alternative approaches to delivering the public interest through considering local collaborative deer management and dealing with competence to shoot deer, a code for responsibility of care and unified methods of collecting data on deer culled. At the same time, the deer sector has placed an increasing emphasis on skills and training. A suite of 74 Best Practice Guides, developed by DCS jointly with the deer sector, is now in place, and there has been continued skills uplift through training and the voluntary uptake of deer management qualifications like the Deer Stalking Certificate. There is now an increased understanding of the environmental impacts of deer and a wider acceptance of the need to ensure that sites designated for their natural heritage interest are in favourable condition.

The Case for Change

14. The current legislation is considered inadequate to meet current or future needs. It is insufficient to encourage or enforce local collaborative deer management, protect the public interest or resolve differences between private interests. It places great emphasis on damage caused by deer without taking account of wider public interests and deer welfare. It relies on inflexible national Close Seasons to regulate access to the common resource and undermines public confidence in welfare standards by allowing blanket exemptions for owner-occupiers, and those in their employ, to shoot deer at any time of the year without reference to industry standards.

Conclusion

15. Against a background of a changing public policy context, with more complex land management practices and expectations, the current wild deer legislation is in need of significant change. It needs to better balance both public and private interests, and in particular there are now:

- A wider range of public interest issues to take into consideration, and that range is likely to increase as society requires its land to deliver more;
- A more diverse range of private objectives of owners and occupiers of land, including more widespread community, NGO and non-sporting interests;
- Dynamic changes in the balance of land use, for example the planned expansion of forestry and a reduction in hill sheep numbers; and
- A need for better mechanisms to deliver local deer management and deer welfare, which are not adequately addressed in the current Act, but which are key to the delivery of the Government's Wild Deer Strategy and to addressing specific Ministerial concerns.

OPTIONS FOR CHANGE

1. In order to meet current and future public interests through deer management, to better balance those interests with private interests, and to meet the need for deer welfare, public safety and food safety, DCS considers that changes could be made to the existing deer legislation. The options outlined below are in two sections – those relating to deer management, and those relating to deer welfare.

Outcomes

2. In developing these proposals DCS has been guided by the need for the following outcomes:

- Delivery of the Scottish Government's National Performance Framework and the Strategy for deer 'Scotland's Wild Deer: A National Approach';
- Enjoyment of existing rights to take deer only constrained by a responsibility to safeguard the public interest and to collaborate with others in the sustainable management of the common deer resource;
- Reassurance of the general public about deer welfare, public safety and food safety standards;
- Decision-making devolved to a local level and made more inclusive; and
- A deer sector able to adapt to future challenges such as climate change.

Principles

3. In addition, we have also been mindful that the proposals should seek to balance the following principles as expressed by stakeholders:

- Reducing bureaucracy on individuals and businesses;
- Linking the private right to shoot deer to a responsibility to safeguard the public interest;
- Empowering landowners, who have the rights to shoot deer, to fulfil their responsibility for managing a common resource in a collaborative manner;
- Promoting responsible deer management;
- Devolving deer management wherever possible to a local level that is locally led and responsive to local conditions and minimising government intervention;
- Making deer management more inclusive and closely linked to natural resource management;
- Employing a risk-based approach to public intervention - focusing public intervention where the risk to public interest is greatest;
- Raising standards among those who shoot deer and manage a natural resource;
- Delivering an equitable balance between public and private interests;
- Integrating deer management with other land uses; and
- Maximising the return on taxpayers' investment.

Process and stakeholder consultation

4. Since the Minister requested the review of the legislative framework, DCS has developed options for change in an open and consultative manner. A number of bilateral meetings were held with key stakeholders during the autumn between DCS and the BDS (British Deer Society), BASC (British Association for Shooting and Conservation), SGA (Scottish Gamekeepers Association), ADMG (Association of Deer Management Groups), Environment LINK, NFUS and an informal briefing with SRPBA (Scottish Rural Property and Business Association). In addition, outline proposals were shared with a wider grouping of stakeholders at the Deer Management Round Table (DMRT), which included, in addition to the above the SSPCA, Police Wildlife Crime Officers,

Ramblers Scotland and the Mountaineering Council of Scotland, and with public partners, SNH, FCS, Scottish Government and the National Parks Authorities.

5. The process of bilateral meetings with stakeholders, and discussions at the DMRT, were valuable both in helping to shape the proposals and in highlighting where there are areas of concern. Stakeholders have been broadly supportive of the principles although they have raised various specific areas of concern over detail, which are considered below. The stakeholders were met at different stages of the review process, but most were present at the DMRT. At the DMRT the discussion recognised that, while local deer management works well in some areas, more support and advice, combined with powers of intervention could improve it where it was not working well. Details of the proposed need to demonstrate skills and knowledge were discussed, with some thinking that the approach should be extended to include skills and knowledge of ecological monitoring, and others questioning the need for such an approach.

6. Within DCS, the development of the options for change was delegated by the Board to a Legislation Sub-committee, chaired by the Chairman of DCS John Milne, with Board members Andrew Barbour and Simon Pepper. Nine meetings of this Sub-committee were supported by DCS senior staff; the Chief Executive, Nick Halfhide; Director of Deer Management, Robbie Kernahan; Director of Policy, Projects and Research, Katy McNeil; Director of Stakeholder Relations, Alastair MacGugan; and Best Practice Officer, Linzi Seivwright. The Sub-committee was extended on two occasions to include agency partners from the Forestry Commission, SNH and Scottish Government. The Board of DCS has seen and commented upon this paper, and shaped the consideration of the issues through two informal Board sessions and two discussions at Board meetings (one in an Open session and one in a Closed session). Two sessions were also held with DCS technical staff to scope issues and test proposals. FCS and SNH have seen and commented on these papers. Both are supportive.

7. The proposals on deer welfare have been informed by the ongoing Welfare and Competence project. This has included a Welfare and Competence Seminar with more than 90 stakeholders in November 2007 and a workshop in May 2008 with 15 stakeholder representatives.

Issues and options considered – Local Collaborative Deer Management

8. The current structure for local collaborative deer management is largely based around voluntary Deer Management Groups. They cover most of the area of red deer range in the uplands but little of the area of the lowlands where roe deer predominate. These arrangements have been effective in some areas where there are similar private objectives amongst land managers. However, there is general agreement that they are not suitable in their current form to address or resolve conflicting private objectives or to deliver multiple public benefits. They would benefit from clearer governance structures, greater resources, expertise and powers to achieve this effectively.

9. There are a number of options for delivering local collaborative deer management. Table 1 below sets out those considered, and the strengths and weaknesses of each approach. These options are not mutually exclusive.

Table 1 Strengths and weaknesses of different options for local collaborative deer management

Option	Strengths	Weaknesses
1. Statutory Deer Management Groups across Scotland with compulsory membership	<ul style="list-style-type: none"> • Comprehensive coverage • Better able to secure public interest • Approach already used for salmon fisheries • Ensure decisions taken are objective, transparent and inclusive 	<ul style="list-style-type: none"> • Expensive option • Increased bureaucracy • Would create a large number of statutory groups • Would need additional public support to set up and run groups • Question of scale – issues over centralisation and loss of control at local level
2. Statutory Deer Management Groups in areas of concern with compulsory membership	<ul style="list-style-type: none"> • Voluntary system would remain in place where no concerns raised • Better focus • As in 1. above • 	<ul style="list-style-type: none"> • As in 1. above but less expensive
3. Compulsory Deer Management Planning across Scotland	<ul style="list-style-type: none"> • Comprehensive coverage • Addresses the issue that deer management plans are often absent 	<ul style="list-style-type: none"> • Expensive option • Increased bureaucracy • Would need additional public funding • No clear additional public benefit
4. Compulsory Deer Management Planning in areas of concern	<ul style="list-style-type: none"> • Targeted intervention • Local plans developed tailored to local circumstances • Ensure decisions taken are objective, transparent and inclusive • Public interest delivered • Cost effective 	<ul style="list-style-type: none"> • Some degree of central control • Potential cost to public purse
5. Voluntary Deer Management Groups as at present (status quo)	<ul style="list-style-type: none"> • Low cost • Decisions taken at a local level 	<ul style="list-style-type: none"> • Not currently delivering well on the public interest • Difficult to reconcile conflicting private interests • Deer management plans not being implemented once agreed
6. Voluntary Deer Management Groups with agreed Best Practice Guidance on local collaborative deer management	<ul style="list-style-type: none"> • Minimal cost • Developed with deer sector – secures buy-in • Decisions taken at a local level 	<ul style="list-style-type: none"> • As in 5 above
7. Duty to manage deer sustainably underpinned by a Code of Practice for Sustainable Deer Management	<ul style="list-style-type: none"> • Clarity of expectations for deer management and obligations on owner/occupiers • Articulates public interest • May provide means for securing cross compliance and better integration with other land uses • Emphasis and incentive to collaborate • Could provide basis for intervention 	<ul style="list-style-type: none"> • Potential difficulty of defining and enforcing a duty in relation to a common natural resource

8. Panels to agree Deer Management Planning and implementation	<ul style="list-style-type: none"> • Flexible solution • Potential for use outside traditional deer ranges like peri urban areas • Time bound with variable period to deliver the outcomes required • 	<ul style="list-style-type: none"> • Requires central direction to identify where solutions needed • Lack of incentives for deer managers to become involved
9. Reintroduction of sporting rates with exemption for delivering sustainable deer management	<ul style="list-style-type: none"> • Provides a financial incentive to actively manage deer to a certain standard 	<ul style="list-style-type: none"> • Complex to reintroduce • Opposition from landowners • May lead to calls to cover other sporting activities which would need to identify management standards to qualify for rebate
10. Power for Deer Management Groups to levy fees	<ul style="list-style-type: none"> • Provides private funding for deer management 	<ul style="list-style-type: none"> • May be difficult to force reluctant land managers to pay

Issues and options considered – Deer Welfare

10. It is assumed here that measures to protect the welfare of deer, in contrast to that of other wild mammals, relate to the iconic cultural and aesthetic status of deer and the use of powerful and potentially dangerous firearms in killing them. Beyond the anti-cruelty provisions in the Wildlife and Countryside Act 1981 and the Wild Mammals (Protection) Act 1996, statutory protection for the welfare of deer is currently largely provided by the Close seasons and a system of authorisations linked to a fit and competent register through the Deer (Scotland) Act 1996. Application in the field is heavily dependent on the practical skills and knowledge of individual stalkers.

11. There have been a number of occasions where organisations have questioned how effectively the deer legislation protects the welfare of individual deer being shot, and the Consultation on the Close Seasons in 2005 pointed out that the current operation of the Close Seasons for male and female deer may not secure their welfare 365 days of the year. In particular, the current legislation exempts owner occupiers from observing the Close Seasons where their crops are being damaged.

12. At the moment, the main measures that the deer sector can use to re-assure the public on deer welfare issues are the Close Seasons; the need for all those who shoot deer unaccompanied to have a firearms certificate or shotgun certificate; the growing proportion of stalkers with some form of qualification; and the voluntary Best Practice Guides and Events. The question arises whether these measures are sufficient to safeguard deer welfare, and ensure public confidence in deer management.

13. Under current legislation, Ministers are obliged to set Close Seasons for the females and may set Close Seasons for males of each species. However the Close Seasons do not prevent the shooting of deer in the Close Seasons. Rather, they prevent certain people in certain circumstances from doing so unless so authorised by DCS. For many landowners and occupiers seeking to prevent damage, the Close Seasons have virtually no practical effect. DCS considers that the current measures to safeguard deer welfare need to place more emphasis on ensuring that all who shoot deer have the necessary skills and knowledge to do so. If Close Seasons are to be considered as a means of further control then their application should be based on the welfare risks identified in industry-agreed Best Practice Guidance on Welfare of deer which relate to dependent juveniles.

14. The two tables below set out the strengths and weaknesses of the options considered to reform the Close Seasons and ensure that all who shoot deer have the necessary skills and knowledge. The options are not mutually exclusive.

Table 2 Bureaucratic burden and effectiveness of options for reforming the Close Seasons

Options	Bureaucratic burden	Effectiveness	
		Strengths	Weaknesses
1. Close Seasons with no exemptions or authorisation	<ul style="list-style-type: none"> No requirement to authorise 	<ul style="list-style-type: none"> Protects deer welfare Simple to understand Easy to enforce 	<ul style="list-style-type: none"> High economic cost to agriculture, forestry and natural heritage
2. Existing Close Seasons for males and females (status quo)	<ul style="list-style-type: none"> Authorisations required to shoot deer out of season 	<ul style="list-style-type: none"> Well understood by deer sector 	<ul style="list-style-type: none"> Owner occupiers do not require authorisation Does not provide a strong safeguard for deer welfare
3. Removal of male season	<ul style="list-style-type: none"> Removal of some authorisations 	<ul style="list-style-type: none"> Provides an incentive for more collaborative deer management at a local level Welfare concerns can be addressed through collaborative management 	<ul style="list-style-type: none"> Likely to be opposed by some sections of the deer sector who fear that it may lead to over exploitation of male deer
4. Shorter female season	<ul style="list-style-type: none"> Requires swift authorisation process where significant loss is occurring 	<ul style="list-style-type: none"> Targets restrictions to time of greatest risk No welfare concern to adult female Veterinary evidence indicates no welfare issue for foetus 	<ul style="list-style-type: none"> Shooting females in late pregnancy is viewed with distaste by some practitioners
5. Removal of all national Close Seasons	<ul style="list-style-type: none"> Removal of requirement to issue authorisations May require Competence Register 	<ul style="list-style-type: none"> Provides most flexibility to deer managers as to when they can shoot deer 	<ul style="list-style-type: none"> Concerns about over exploitation, particularly stags Does not ensure welfare of dependent juveniles
6. Removal of owner- occupier exemptions	<ul style="list-style-type: none"> Brings owner occupiers into authorisation process 	<ul style="list-style-type: none"> Provides reassurance to public that welfare standards apply to all 	<ul style="list-style-type: none"> Increased bureaucracy for owner occupiers wanting to protect their crops from damage

Table 3 Bureaucratic burden and effectiveness of options relating to skills and knowledge

Options	Bureaucratic burden	Effectiveness	
		Strengths	Weaknesses
1. Status quo	<ul style="list-style-type: none"> • Some measure of skills and knowledge required (DSC level 2) by those who lease land (FCS, Tillhill etc) • Statutory requirement for demonstration of 'fit & competence' via the authorisation process • Voluntary uptake of qualifications currently costs DSC 1 ca £80-£250 and DSC 2 ca £90-£350 	<ul style="list-style-type: none"> • Initiative remains with the sporting organisations • Currently no quantitative evidence of issues with public safety, deer welfare and food safety • Not a perceived disincentive to new stalkers or existing practitioners 	<ul style="list-style-type: none"> • No independent or transparent assurance of competence to public • Does not facilitate deregulation of the authorisation process • No accurate assessment of national cull • Voluntary uptake of qualifications does not cover all who kill deer unsupervised • Anyone may kill deer unsupervised having secured only a Firearms Certificate and permission of the owner-occupier.
2. Approved codes	<ul style="list-style-type: none"> • Measure of skills and knowledge required by those who lease land (FCS, Tillhill etc) may still remain • Statutory requirement for demonstration of 'fit & competence' via the authorisation process may still remain 	<ul style="list-style-type: none"> • Initiative remains with sporting organisations • Not a disincentive to new stalkers or existing practitioners • Recognised route as first step in dealing with potential issues 	<ul style="list-style-type: none"> • Does not proactively demonstrate that practitioners possess competence • "[May be] viewed with suspicion by public as simply a form of self-justification of existing practice" Putman 2008 DCS Report • No mechanism to deal with breaches of voluntary code
3. Statutory codes	<ul style="list-style-type: none"> • Requires Government/Agency overseeing + reviewing process • Limited administrative burden • Low cost to participants 	<ul style="list-style-type: none"> • Sets acceptable standard • Adaptable and responsive to sector desires/political aspirations • Defines ongoing behaviour against which actions could be continually judged • May not be perceived to present a barrier to new entrants or current participants • May underpin a duty of care as widely used in other land sectors 	<ul style="list-style-type: none"> • Unless underpinned by a duty of care and some form of register would be difficult to deal with breaches of the code • Difficult and costly to enforce a duty through criminal court proceedings • May be viewed as a negative defensive measure rather than an endorsement of individual's skills • Individuals could still be subject to training costs

<p>4. Theoretical test of skills and knowledge</p>	<ul style="list-style-type: none"> • Requires keeping of records by those who shoot deer • Could require central Register • 1 day for test 	<ul style="list-style-type: none"> • Ca 13,000 already passed theoretical test (UK) which incorporates simulated testing of some practical elements (eg shooting and safety) • Tests knowledge and basic understanding • Can enable better assessment of national cull and provide mechanism for obtaining other data • Certification and its removal is a mechanism for addressing incompetence • Comparable with other European and N. American systems • Can use International Hunters Education Association Standards to map visitors qualifications 	<ul style="list-style-type: none"> • Individual deemed 'competent' without demonstrating practical ability to kill deer other than target shooting • Individuals have passed similar tests without experience of live deer • Industry previously recognised this weakness and developed the DSC 2 • Does not meet the standard set by the industry led Game & Wildlife Management Group of LANTRA (The Sectors Skills Council) • Oral or written test scenario may act as barrier to some practitioners • Would require lead-in time • Does not ensure continued competent actions post testing • No acknowledgement of previous practical knowledge and skills
<p>5. Practical demonstration of skills and knowledge for all</p>	<ul style="list-style-type: none"> • Requires keeping of records by those who shoot deer • Could require central Register • Time to completion depends on assessment process but estimated range is ½ - 4 days • Cost dependent on assessment process 	<ul style="list-style-type: none"> • Practical demonstration of ability to kill deer • Demonstrates individual possesses the appropriate balance of knowledge and skills and is consistent across all practitioners • Recognises the skills and knowledge of practitioners in a vocational context • Meets the standard set by the industry led Game & Wildlife Management Group of LANTRA (The Sectors Skills Council) • Is a positive endorsement of an individual's skill • Can allow a diversity of assessment processes to develop (ranging from mentoring/referee, work place appraisals to current DSC 2) • Can enable better assessment of national cull and provide mechanism for obtaining other data • Certification and its removal is a mechanism for addressing incompetence 	<ul style="list-style-type: none"> • May be insufficient assessors/witnesses to meet demand (at least initially) • Requires one to one relationship due to the nature of the land-based activity • Could act as barrier to new entrants and existing practitioners • High initial cost and represents a high time commitment • May require a training element • Will require lead in time of 3-5 years • Does not ensure continued competent actions post assessment • If deemed too onerous a process may lead to increased illegal activity and criminalise some current participants (eg those in agriculture who do not shoot many deer) • May be difficult to map across using International

			Hunters Education Association Standards
6. Practical demonstration of skills and knowledge at different levels for different activities	<ul style="list-style-type: none"> • As in 5 above 	<ul style="list-style-type: none"> • As in 5 above • Matches levels of skills and knowledge more closely to different levels of activity and responsibility 	<ul style="list-style-type: none"> • As in 5 above • More complex than a minimum standards alone • Agreed standards yet to be fully developed with industry
7. Compulsory training	<ul style="list-style-type: none"> • Measure of skills and knowledge required by those who lease land (FCS, Tillhill etc) may still remain • Statutory requirement for demonstration of 'fit & competence' via the authorisation process may still remain • Requires record of training • May require use of approved trainers and government approved quality control (LANTRA Awards as one example) • Costs in line with training packages delivered under 1 above. 	<ul style="list-style-type: none"> • Links and supports Best Practice Guides • Industry delivered • LANTRA Sectors Skill Council has developed standards to base training on • Adaptable and responsive to sector desires/political aspirations 	<ul style="list-style-type: none"> • No method to address consequences of acting in-competently • No acknowledgement of existing knowledge and skill • Most other land use sectors combine training with some form of assessment • Costs of training may spiral as captive market

15. DCS has been exploring options with the deer sector for some time to continue raising welfare standards in the sector and be able to show those standards are in place (including looking at the systems of hunting licences that operate in most other European countries), whilst at the same time achieving a net reduction in the regulatory burden. In addition, these measures need to complement the ambitions for more widespread and inclusive local collaborative deer management, with wider access to the common wild deer resource.

16. On Close Seasons, DCS considers that the only change to the current legislation should be to give the Minister a choice in setting Close Seasons. This would allow the simplification of the Close Seasons to a shorter, more focused Close Season for female deer to protect dependent juveniles, and the removal of a male season except where there was a local consensus for its retention. 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. Evidence from the consultation on the Close Seasons and subsequent work suggests that this is a sensible approach. DCS appreciates that the removal of the Close Seasons may be viewed by some as an opportunity for others to over exploit deer previously unavailable to them. However, this risk will be significantly reduced once effective local collaborative deer management is in place. For this reason, and to allow for collaborative deer management involving all relevant interests to become more firmly established, DCS recommends a phased removal of the Close Season for male deer once other parts of the advice have been implemented.

17. On skills and knowledge, it can be argued that there should be a continuation of the current voluntary approach that has seen the number of stalkers gaining qualifications increase alongside the development of Best Practice. However, it can also be argued that, whilst commendable, this voluntary approach will only ever be self-selecting and stronger measures are needed to encourage and ultimately enforce higher standards for all who shoot deer, bearing in mind the

difficulty of the regulation of this activity. DCS consider that there are two main options, either separately or combined:

- a requirement that all who shoot deer have to follow a Code of Practice; and/or
- a practical assessment of skills and knowledge.

The former is a lighter touch whereas the latter is a more rigorous demonstration that all who shoot deer have reached a certain standard.

18. A practical assessment would demonstrate that all who shoot deer have reached a minimum standard, and a Code of Practice would be a clear statement of on-going standards. In addition, there would be 'spin-off' benefits from holding the details of all those competent to kill deer on a register, in particular improving the flow of information between the Government and the deer sector, for example in the event of a disease outbreak or a food hygiene issue.

19. These changes would need to be delivered in such a way that an assessment of skills and knowledge should not be burdensome, or prove a barrier to new entrants who wish to shoot deer.

20. Furthermore DCS has also considered the welfare around shooting at night and driving deer with vehicles, and considers that changes to the legislation would bring additional benefits.

RECOMMENDATIONS

Deer Management

1. The DCS Board and stakeholders agree that voluntary deer management, delivered through Deer Management Groups and other local arrangements, should remain at the heart of local collaborative deer management (option 5, Table 1; recommendation 1, Annex E). Public agencies should continue to support their work through incentives and regulatory tools. However, DCS believes that in a number of cases, particularly where land management objectives are complex and competing, voluntary arrangements have proved unable to deliver public benefits required or reconcile the private interests of neighbouring landowners. DCS considers that further legal provisions are required to bring about effective collaborative deer management at a local level.

2. This would involve changing the provisions in Part II of the Deer (Scotland) Act 1996 and introducing a new duty on owners or occupiers to sustainably manage deer (option 7, Table 1; recommendation 2, Annex E). The duty would be backed by a Code of Practice which describes local collaborative deer management. The duty would be framed to make it clear that it will only apply where it is reasonable, so that owners or occupiers of small land holdings or gardens would not be subject to it.

3. In addition, new powers should be introduced to compel land managers to develop and implement deer management plans at a local level where the voluntary approach is failing to protect the public interest (option 4, Table 1; recommendation 3, Annex E), for example where natural heritage features on designated sites are not in favourable condition or where there are other related public interests such as the maintenance of a sustainable deer population, carbon sequestration, public or animal health, and rural employment. This new power would be a replacement of the existing compulsory scheme under section 8 of the Deer (Scotland) Act 1996, which has always been regarded as impractical and has never been used. This power would be supported by offences relating to non-compliance and measures for DCS to enforce the plan and recover costs.

4. There are some situations, for example in areas where voluntary deer management groups do not exist, but deer management issues could arise, where the setting up of a formal panel would be the most appropriate route to encourage the delivery of the public interest (option 8, Table 1; recommendation 4, Annex E). DCS has already used this mechanism successfully in a limited number of cases to deal with localised road traffic accident hotspots and considers that a slightly modified system would be a useful tool to address some local deer issues, particularly in some woodland and peri-urban situations. These panels would be required to develop and deliver a deer management plan. Panels would be 'task and finish' groups focusing on a specific issue, and then disbanded once delivery mechanisms were in place.

Deer Welfare

5. In view of the public interests of deer welfare, public safety and food safety, and to instil public confidence in the deer sector, all those who shoot deer should be required to demonstrate practical deer skills and knowledge (option 5, Table 3; recommendation 6, Annex E). Individuals would be entered on a register. This would build on assessment approaches already in place and on the DCS database of those authorised to shoot deer out of season. It would be a new offence for anyone to take or kill deer without being on the register. Only those shooting deer under supervision of a person on the register would be exempt, and provisions would be put in place to recognise foreign awards or licences. The introduction of the register would be phased in over a number of years. This approach would support the principle of the individual being responsible for their own actions. All those on the register would have to submit an annual cull return and comply with a Code of Practice (option 3, Table 3; recommendation 6, Annex E). DCS would be required to develop this code with input from stakeholders.

6. This joint approach should ensure both a minimum standard among all those who shoot deer as well as a mechanism to encourage continuing good practice. It will be important to ensure that the requirements and costs of assessment are as low as possible, and in proportion to the risks identified and the benefits expected. A number of categories of individuals have already demonstrated the necessary skills and expertise, and may not need to be subject to further testing depending on what assessment process is ultimately agreed. Some might need particular assistance to get on to the register, such as farmers and crofters, and this could also be supported by DCS in the form of the Best Practice Demonstration Events and other mechanisms. Individuals would be removed from the register if they committed a deer-related offence or where they had been shown not to be complying with the code.

7. Once this register and more effective and inclusive local collaborative deer management are in place, a number of deregulatory measures could be introduced. In terms of the national Close Season for male deer, it should be phased out but leaving the possibility of a Close Season for male deer being put in place where agreed at a local level. The female Close Season should be reduced to cover the period of greatest risk to dependent juveniles (options 3 and 4, Table 2; recommendation 7, Annex E). Authorisations to shoot females during the Close Season would be dealt with quickly by DCS but only granted in exceptional circumstances where there was a significant risk of loss to property, crops or public safety; and would be supported by detailed guidance. There would no longer be an automatic exemption from these provisions for farmers, foresters and crofters (option 6, Table 2; recommendation 11, annex E). The removal of these rights would be a significant change for many farmers, foresters and crofters, and may be contentious as it will require them to be included for the first time in an authorisation process albeit for a shorter revised female Close Season. It is important that the timing of the removal of this exemption is tied closely to the changes in Close Seasons.

8. Those wishing to shoot deer at night should no longer require prior authorisation provided that they have demonstrated the skills and knowledge associated with night shooting, and that this is recorded on the register (recommendation 8, annex E). Night shooting should continue to be supported by a detailed Code of Practice. Those wishing to drive deer with a vehicle should no longer require prior authorisation. Instead, the welfare of deer should be safeguarded by a new offence of recklessly driving deer with vehicles (recommendation 9, annex E).

Data Collection

9. DCS is currently undertaking further research on the topic of data collection area and is due to consider more developed proposals in March 2009. It recognises the importance of having an accurate record of the number of deer shot so that the status of populations of deer can be assessed in combination with other measurements. Some information is currently obtained from landowners known to the DCS where deer are culled but this system leads to cull returns which are known to underestimate the number of deer shot.

10. Subject to the outcome of the work referred to above, DCS recommends that the power to require owners and occupiers of land to produce annual cull returns should be removed (section 40 of the 1996 Act), and instead DCS should be provided with the power to require all those authorised through the register to shoot deer to submit an annual cull return, covering such information as the number, species, sex and location of deer shot (recommendation 10, Annex E). Changing this provision would not only benefit DCS by providing more accurate information at a national level, but would also allow the collection and dissemination of more complete and accurate cull returns to assist local collaborative deer management planning.

SUMMARY OF RECOMMENDATIONS

- Recommendation 1:
Support to voluntary system** DCS continues to support the existing voluntary approach to local collaborative deer management. To assist this approach, DCS would work with the Association of Deer Management Groups and other interests to strengthen local collaborative deer management.
- Recommendation 2:
Duty to manage deer** A duty to manage deer sustainability should be introduced on owners or occupiers of land, supplemented by a Code of Practice setting out the requirements of local collaborative deer management.
- Recommendation 3:
Compulsory planning** A new power should be introduced to compel a group of land managers to develop and implement a deer management plan to protect the public interest where the voluntary approach is failing. This power would be supported by offences relating to non-compliance and measures for DCS to enforce the plan and recover costs.
- Recommendation 4:
Panels** Existing provisions that allow DCS to appoint advisory panels to deal with local deer management issues (section 4 of Deer (Scotland) Act 1996) should be extended to allow DCS to place a duty on its members to prepare and implement a management plan within a specified area.
- Recommendation 5:
Powers of intervention** Existing powers of intervention (section 10 of the 1996 Act) when no other powers are adequate should be extended to take action in situations prejudicial to the natural heritage, economic loss, public safety and deer welfare
- Recommendation 6:
Skills and knowledge** All those who shoot deer should be required to demonstrate practical skills and knowledge. Individuals would be entered on a register. It would be a new offence to kill or take deer without being on this register. There would be exceptions for those shooting under supervision and for foreign stalkers who held an approved hunting certificate. All those on the register would have to comply with a Code of Practice.
- Recommendation 7:
Close seasons** The Minister should have discretionary powers to set Close Seasons for male and female deer. In the medium term, changes to local collaborative deer management would allow the reduction of the female Close Season to cover the period of juvenile dependency and removal of the national male season. An authorisation procedure would be put in place to allow the shooting of female deer and their offspring during the Close season in exceptional circumstances associated with public safety, economic loss, environmental impacts and public or private amenity.
- Recommendation 8:
Night shooting** The right to shoot deer at night should be linked to a demonstration of skills and knowledge of night shooting which would be recorded on the register, and subject, as it is currently, to a Code of Practice. It would be an offence to shoot deer at night without being on the register for this purpose. This would replace the existing system of authorisation which is based on the area rather than the individual (section 18 of the 1996 Act).

- Recommendation 9:
Driving deer with
vehicles** The existing offence of driving deer with a vehicle (section 19) should be altered to an offence of recklessly driving deer. This would remove the need to seek authorisation from DCS for driving deer.
- Recommendation 10:
Cull returns** The power of DCS to require owners and occupiers of land to produce annual cull returns should be removed (section 40 of the 1996 Act), and instead DCS should be provided with the power to require all those authorised through the register to shoot deer to submit an annual cull return, and for it to be an offence not to submit the return.
- Recommendation 11:
Removal of owner
occupier rights** The right of owner occupiers to shoot deer in the Close Seasons to protect their crops without seeking authorisation should be removed (section 26). This provision would be phased in over the medium term to fit with the changes to the male and female Close Seasons.
- Recommendation 12:
Miscellaneous
Provisions** Other sections of the Deer (Scotland) Act 1996 which deal with offences connected with moving vehicles (section 20), firearms and ammunition (section 21), those committing an offence acting together (section 22) and the illegal possession of deer (section 23) would remain the same as in the current Act. The powers of search and seizure (section 27), arrest (section 28), offences by body corporate (section 29) and the powers of the court (sections 30 and 31) should also remain the same. The new legislation would not apply to farmed deer (section 43). The section (sections 33-36) on venison dealer licences and records, and offences connected with being a venison dealer may need to be reviewed.

LINKS TO SUPPORTING DOCUMENTS

<i>Scotland's Wild Deer: A National Approach</i>	http://www.dcs.gov.uk/downloads/Wild%20Deer%20Strategy%20Final%20Proof.pdf
<i>Report of the consultation on the proposal to merge the functions of the Deer Commission for Scotland (DCS) into Scottish Natural Heritage (SNH)</i>	http://www.scotland.gov.uk/Resource/Doc/1051/0059608.pdf
<i>Close Seasons: A Consultation by the Deer Commission for Scotland</i>	http://www.dcs.gov.uk/downloads/closesseasons.pdf
<i>Close Seasons: Summary of Responses Report</i>	http://www.dcs.gov.uk/downloads/Summary%20of%20Responses%20Report%20Final%20020905.pdf
<i>Best Practice Guidance</i>	welcome to BPG
<i>Deer (Scotland) Act 1996</i>	Deer (Scotland) Act 1996 (c. 58)
<i>The Contribution of Deer Management to the Scottish Economy (2006) PACEC</i>	http://www.deer-management.co.uk/documents/contribution01.pdf
<i>DCS Welfare and Competence Project</i>	Welfare and competence
<p><i>DCS reports on Competence</i></p> <p>1.1.1: A report on the limitations and costs of current methods to assess competence</p> <p>C2.1.1: A draft definition of competence</p> <p>C3.1.1: A review of options used to assess competence in other countries</p> <p>C3.1.2: A review of options, based on new and existing ideas, which could be used to assess competence in Scotland</p> <p>C4.1.1: A review of systems used to monitor competence in other countries</p> <p>C4.1.2: A review of systems, based on new and existing ideas, which could be used to monitor competence in Scotland</p>	Competence