

# **Deer Panel - Review of Authorisations**

**Report to Scottish Natural Heritage  
September 2016**

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## Executive Summary

The Deer (Scotland) Act 1996 (as amended) provides for the appointment of a Deer Panel to give advice to Scottish Natural Heritage (SNH) on any matter relating to their deer functions. In December 2015, the Minister for the Environment approved the appointment of a Panel to undertake a review of how SNH issue authorisations to kill deer out of season and at night. The appointment of the Panel was in response to a number of concerns expressed to SNH, including the growing demand for authorisations and the resultant number of deer killed under these.

The report is divided into three parts: Part 1 deals mainly with background issues and concerns over the issuing of authorisations; Part 2 details the findings based on an examination of the evidence base; and Part 3 explores emerging issues and makes recommendations for SNH to consider.

The Panel reviewed all of the available data and drew heavily on written and oral submissions given in support of the process. The Panel met five times in the period between February and August 2016 and are grateful to those individuals and organisations who contributed to the review process by providing input, whether via written submission, evidence sessions or via direct contact with Panel members.

This report presents the findings of the Panel.

## Main Findings

- The Panel have concluded that the processes in place to administer deer authorisations are largely fit for purpose. A number of recommendations have been made for SNH to consider on the basis that they will support and improve the delivery of this service.
- The evidence presented during the review clearly demonstrates the importance of, and the continued need for, out of season and night shooting deer control to support key public policy objectives, as well as to protect private interests.
- The authorisation process cannot, and should not, be the tool to reconcile different or competing land management interests. The process can, however, influence and support approaches and behaviours to deliver collaborative solutions and management in line with the Deer Code<sup>1</sup>.
- The Panel considered the changes brought in through the Wildlife and Natural Environment Act 2011 which give SNH discretion to vary their approach to out of season control according to land type and the nature of any damage caused. The Panel felt that changes to the current approach were so significant that any consideration of this aspect goes beyond a review of authorisation processes and should form part of a wider review of deer management.

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<sup>1</sup> “Deer Code” means the code of practice laid before the Scottish Parliament and currently in operation in pursuance of section 5A of the Deer (Scotland) Act 1996 as amended.

- The Panel does not, at this time, propose significant changes in the use of Specific or General authorisations. The Panel are however supportive of moving towards an approach where the control of deer out of season and at night is regarded as an accepted component of deer management planning. The Panel recognise that for this to happen, approaches to deer management planning need to have evolved further and be sufficiently robust to handle the issues associated with integrating different management objectives. SNH should give further consideration to the different approaches to land use and damage type currently in place.
- The Panel considered both the openness and transparency of the authorisation process and have highlighted the importance of the availability of cull information associated with out of season and night shooting in the context of supporting local collaborative approaches to deer management.
- The Panel believe that the Wild Deer Best Practice resource should be reviewed and updated in light of recent legislative changes and that further work might be done to more clearly articulate the tests and the definitions of ‘damage’<sup>2</sup> and other ‘reasonable means’<sup>3</sup>.
- The Panel also recognise the potential benefits of further guidance being developed on Deer Management Planning which highlights that out of season and night shooting are an integral part of modern deer management in many situations, and should not be regarded as exceptional or unusual.

## Key issues and recommendations

The Panel identified five key issues which were considered to be important and have made recommendations in four of these areas:

### 1. The changing nature of deer management in Scotland

### 2. The need for openness and transparency (recommendations 1- 4)

Recommendation 1: SNH should review and publish authorisation guidance for applicants which provides clarity on the expectations and behaviours of both the applicant and potentially affected parties. The Panel recommend a more explicit requirement in the application process to provide evidence of communication regarding previous efforts to find collaborative solutions. A worked example of an application outlining the level and nature of the detail sought would be helpful.

Recommendation 2: Given that authorisations have the potential to impact on neighbours, and in the pursuit of the Better Regulation agenda, it is suggested that a summary of applications (minus any sensitive personal data) and their results should be made publicly available.

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<sup>2</sup> “damage” <http://www.bestpracticeguides.org.uk/reference/damage-definition>

<sup>3</sup> “other reasonable means” – Under provisions of sections 5(6) and 18(2) of the Deer Scotland Act 1996 (as amended) SNH must be satisfied that no other means of control which might reasonably be adopted in the circumstances would be adequate before authorising an owner or occupier of land to cull deer.

Recommendation 3: SNH should consider the annual publication of data on deer culls including out of season and night shooting.

Recommendation 4: Collaborative Deer Management Planning and Plans should be considered in assessing authorisation applications.

### **3. Resource availability and the need for reasonableness (recommendation 5-7)**

Recommendation 5: SNH authorisations guidance should be updated to better reflect SNH's approach to assessing resources as part of the test of 'other reasonable means'.

Recommendation 6: SNH should consider the case for increasing the period of site specific authorisations beyond the current maximum 12 month period where there is evidence that ongoing use of out of season or night shooting will be required.

Recommendation 7: SNH should consider taking a risk-based approach to site visits to avoid expending unnecessary resources, as opposed to prescriptively conducting repeat site visits on a three year basis.

### **4. Welfare, training and standards (recommendations 8-12)**

Recommendation 8: SNH should consider working with training providers to develop training on control in areas of high public access in order (i) to address the likely prospect that more deer control will be necessary and (ii) to give the public further assurance of competence.

Recommendation 9: SNH, in conjunction with the Wild Deer Best Practice steering group, should consider the role and training of dogs for use during night shooting.

Recommendation 10: SNH should consider undertaking research to gather more objective data from those undertaking culls on aspects of welfare and efficacy associated with night shooting.

Recommendation 11: SNH should consider undertaking work to establish whether there are benefits for safety, efficacy and deer welfare associated with permitting use of night vision and image intensifying scopes for culling deer. (NB - Any change to allow the use of night sights for deer would require a change to the Deer (Firearms etc) (Scotland) Order 1985)

Recommendation 12: SNH should review the demand for, and the likely welfare implications of, April and September shooting of females, and consider any required changes to the seasonal restrictions currently placed on the General Authorisation as well as on the conditions currently generally placed on the shooting of females under Specific Authorisations.

### **5. Natural Heritage as a land use (recommendations 13-14)**

Recommendation 13: SNH should develop an audit process for assessing balancing duties and should provide this when refusing or applying conditions to any authorisation.

Recommendation 14: The Panel recommends moving towards a streamlined approach to the control of deer out of season and at night, but does not, at this time, propose significant changes in the use of Specific or General Authorisations. Moving forward,

SNH should consider how best to align the different approaches to land use and damage type that are currently in place.

## Part 1 - Background

### Introduction

The Panel recognise that wild deer are an iconic symbol of Scotland and a keystone species within the country's internationally important ecosystems. They support jobs and local economies in various ways, including through tourism, sporting activities and the production of venison. Scotland's wild deer do not have any predators to control their numbers, so management by people is necessary to maintain and alleviate grazing and trampling pressures in certain locations where deer exist at high densities. At the appropriate levels, grazing and trampling can help maintain habitats and species diversity; however, too much (or too little) grazing can present problems. In addition, the presence of deer on or around Scotland's road network can cause a risk to public safety.

Wild deer are often viewed as a symbol of the remote and rugged parts of Scotland. However, their influence is not limited to remote and rural areas. The interaction between wild deer and people is increasing, particularly in urban areas as woodland cover increases in and around towns and cities.

Careful and responsible management of wild deer aims to achieve a balance between the deer population, the natural environment and various other land management interests such as agriculture, forestry, sport stalking and the natural heritage. Furthermore, the people of Scotland care about the proper treatment and welfare of animals and the deer sector places welfare at the very heart of all that it does by working in partnership to continually improve deer management standards to avoid compromising the welfare of deer.

The management of deer is continually changing and evolving as new skills are introduced and the deer sector strives to increase the standards and skills of deer managers. The deer sector is also increasingly trying to provide information and raise awareness about deer management and deer-related issues, not only with those who work with deer but also amongst the wider public.

When considering integrated land use, the management of woodlands and the control of resident deer have been subject to a degree of change which exceeds that experienced in other land uses in recent years. The Panel heard how this related to a number of factors, from overarching government policies regarding expanding woodland cover, resource constraints resulting from changes in commercial timber prices, issues with porosity of fencing, a move towards a continuous cover approach<sup>4</sup> to woodland management, a greater species mix necessitated by the need to safeguard against pest and tree disease, climate change and the grant and incentive based requirements to protect public investment.

The Panel recognises that there are major differences between Upland and Lowland settings not least the structures and ways of working of Upland Deer Management Groups (DMGs) as compared with the evolving Lowland Deer Groups and that a "one model fits all approach" is not applicable.

All of these factors influence the review of authorisations to shoot deer, which this report is primarily focussed on.

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<sup>4</sup> "Continuous cover" [http://www.forestry.gov.uk/pdf/fcin29.pdf/\\$FILE/fcin29.pdf](http://www.forestry.gov.uk/pdf/fcin29.pdf/$FILE/fcin29.pdf)

## Legislative Overview

The principal statute protecting and regulating wild deer in Scotland is the Deer (Scotland) Act 1996 (as amended). SNH is tasked, in accordance with the provisions of this legislation, to further the conservation of deer native to Scotland, which includes their control and sustainable management, and a requirement to keep all matters relating to deer under ongoing review.

The 1996 Act requires Scottish Ministers to set a close season<sup>5</sup> for the shooting of female deer, and provides an enabling power to set close seasons for male deer. It is an offence to kill deer during the close season or at night without the permission of SNH.

SNH may authorise individuals – thereby giving them legal permission – to shoot deer in circumstances where they would not normally have the right to do so. The two main examples of this are culling deer during the close season and culling deer at night. Both of these options may contribute to the delivery of a range of objectives, both private and public.

Amendments made through the WANE Act allow SNH discretion over whether authorisations for land type and persons should be Specific, which require application and specific approval from SNH, or General, which are published by SNH with conditions of use set out.

SNH currently issue a General Authorisation<sup>6</sup> for the prevention of damage to land types set out in Section 5 (6) (a) of the Deer (Scotland) Act, agricultural land<sup>7</sup> and enclosed<sup>8</sup> woodland<sup>9</sup>, and Specific Authorisation is used for prevention of damage to unenclosed woodland, the natural heritage<sup>10</sup> and public safety, which are set out in Section 5 (6) (b). A table setting out the relationship between Open Seasons set by Order and both Specific and General authorisations, as they are currently applied by SNH, is included in Appendix 1.

All night shooting of deer is authorised by Specific Authorisation under Section 18(2) of the Deer (Scotland) Act.

## Why the need for a review?

The demand for authorisations, and as such the number of deer shot under authorisation, has continued to increase in the last few years<sup>11</sup> and as a result, concerns have been aired about the controls currently in place for issuing them.

The legislation sets out three “tests” which SNH must be satisfied are met before approving the culling of deer out of season and at night. The first test relates to preventing damage. SNH currently assess this against an applicant’s objectives, which they are asked to provide. The second test evaluates whether other means of control which might reasonably be

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<sup>5</sup> The Deer (Close Seasons) (Scotland) Order 2011 <http://www.legislation.gov.uk/ssi/2011/417/made>

<sup>6</sup> General Authorisation 201-17 <http://www.snh.gov.uk/docs/A1924145.pdf>

<sup>7</sup> “agricultural land” has the meaning given by the Agricultural Holdings (Scotland) Act 1991

<sup>8</sup> “enclosed” means enclosed by a stock-proof fence or other barrier, and “unenclosed” shall be construed accordingly

<sup>9</sup> “woodland” means land on which trees are grown, whether or not commercially, and includes any such trees and any vegetation planted or growing naturally among such trees on that land.

<sup>10</sup> “natural heritage” includes flora and fauna, geological and physiographical features and the natural beauty and amenity of the countryside

<sup>11</sup> Panel Paper <http://www.snh.gov.uk/docs/A1920524.pdf>

adopted in the circumstances would be adequate. For Specific authorisations SNH currently assess this against the control of deer in season and during the day in the previous 12 months. Applicants are required to provide details of their control efforts to date, but no means-testing of effort is undertaken. The third test requires that controllers are fit and competent. For General authorisations it is up to the individual to ensure that the terms and conditions of use are complied with, therefore satisfying SNH that the “tests” have been met.

The nature of some of the specific concerns outlined below are often linked to tensions which exist between different land use objectives. Therefore their relevance to the authorisation process or the tests SNH consider varies depending on the circumstances, but particular issues which have been raised include:

- Impacts on stag populations through culling of wintering stags in unenclosed woodland in upland red deer ranges.
- Lack of openness and transparency in the use of authorisations which undermines local collaborative management.
- Concerns over public safety when night shooting is used in peri-urban environments.
- Views that night shooting is now being used as the primary means of control in many forests.
- Both the ease and the difficulty associated with securing authorisations.
- Use of authorisations is restricting private sector opportunities to access stalking on public land.

Given the increasing demand for authorisations, concerns surrounding how SNH assess and administer these requests, recent changes in legislation and the evolving policy context, SNH committed to undertake a review of the key aspects of the process and appointed a Panel under Section 4 of the Deer (Scotland) Act 1996 accordingly.

## Panel Terms of Reference

The agreed Terms of Reference<sup>12</sup> for the review stated that the Panel would:

- Consider the data relating to the use of authorisations permitting the culling of deer out of season and at night;
- Identify and outline the requirement for, and concerns relating to, the use of authorisations;
- Review SNH Authorisation procedures and make specific recommendations on any changes that may be appropriate;
- Provide a report to SNH on the findings of this review.

The Panel did not look at the underlying issue relating to deer seasons but specifically focused on the processes and procedures in place for administering the assessment and issuing of authorisations, within the current legislative framework.

## Panel Membership

Members of the Panel identified by SNH and appointed by Dr Aileen McLeod Minister for Environment, Climate Change and Land Reform in December 2015 comprised: Dr Andrew Barbour (farmer and owner of Bonskeid Estate), Dr Helen Armstrong (Consultant Ecologist), Robbie Rowantree, (stalker and estate manager on estates in Sutherland), Dr Charles

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<sup>12</sup> Deer Panel terms of Reference - <http://www.snh.gov.uk/docs/A1843434.pdf>

Warren (the University of St Andrews), Dr Pete Goddard, (Veterinary Surgeon and former head of Ecological Sciences at James Hutton Institute), Dr Peter Semple (Inverclyde & Dunbartonshire Lowland Deer Group and Lowland Deer Network Scotland).

The Panel appointed Andrew Barbour Chair, Secretary was Kelly Matheson, supported by Donald Fraser and Robbie Kernahan (SNH).

## Summary of Review process

The Panel held five meetings between February and August 2016 to consider the issues. Minutes and papers for these meetings were posted on the SNH website at <http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/deer/statutory-returns/>

The Panel agreed that a full public consultation exercise would not be undertaken in considering the issues. However, members of the Deer Management Round Table (an industry representative forum) were contacted and asked to provide written submissions. The Panel were clear that they welcomed submissions from any organisation or individual who could usefully contribute to their understanding and consideration of the issues. Sixteen written submissions were received and carefully considered throughout the review process. These have been posted on the SNH website at- <http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/deer/statutory-returns/>. A list of invitations sent and responses received is outlined in Appendix 2.

Representatives of Forest Enterprise Scotland (FES), the Scottish Gamekeepers Association (SGA), the Association of Deer Management Groups (ADMG / Lowland Deer Network (LDNS) and the National Trust for Scotland (NTS) were invited to attend evidence sessions which allowed the Panel members to further explore some of the evidence provided in the written submissions.

## Preparation of the report

There is substantial literature on deer management in scientific papers, research and technical reports, management guides and website material. The Panel drew on these where relevant and on some of the more recent policy-related publications, primarily where the challenge of managing deer sustainably is set out in Scotland's Wild Deer; A National Approach (including 2015-2020 Priorities), The Land Use Strategy (LUS) (Scottish Government, 2011), the 2020 Challenge for Scotland's Biodiversity (taking forward the earlier Scottish Biodiversity Strategy: Biodiversity Scotland, 2015) and the regulatory context as outlined by the Regulatory Reform (Scotland) Act 2014.

This report was drafted by the Secretariat provided by SNH on the basis of the Panel's consideration of the issues. The Panel report and its recommendations have been agreed through the consensus of Panel members.

## Part 2 - Report Findings

### Openness and transparency in the use of authorisations

The Panel considered various aspects of communication in the application process and the need (or not) for collaboration. The Panel also explored aspects of openness and transparency once authorisation had been granted. Submissions to the Panel raised concerns from individuals and organisations that the authorisations process is opaque in nature or not open to individuals or communities with an interest. Although this was an area in which it was difficult to quantify, identify or evidence any specific concerns, the Panel agreed that it would be beneficial to consider whether improvements could be made to the process to make it more open and transparent.

The Panel also felt that it was important to emphasise and recognise that authorisations as a tool cannot be used as a means of reconciling different land use objectives. They are often the outcome of situations where cross boundary communication has not taken place or has broken down. It is critical to be clear about the limits of these tools - both in terms of providing solutions to conflicting land management objectives or other underlying issues, i.e. they are the symptom, not the cause.

#### *Communication*

The key issue appears to relate to what level of local consultation and communication is required before an authorisation is granted. In terms of local collaboration, the Panel considered the extent to which neighbours and Deer Management Groups (DMGs) should be involved in the authorisation process (where applicable) and what implication this might have for SNH who are committed to providing an enabling licensing service which is responsive to the needs of owner/occupiers to prevent damage.

The Panel agreed as a result of their evidence sessions and discussions that more evidence of dialogue in the application process would be helpful, but the challenge is to ensure the appropriate level of detail and prescription.

- The Panel agreed that authorisations cannot be used as a tool to reconcile differing objectives and/or find solutions – but the process could better define what is expected in terms of the behaviour of both the applicant and affected neighbours.
- The Panel agreed that it is reasonable that an application should be required to include evidence concerning communication by the applicant with, and any action by, an affected neighbour.
- The Panel agreed that SNH should not be prescriptive in what form that communication should take, but they should ensure that the application includes evidence that it has taken place.
- The Panel agreed that the requirement placed upon an applicant to communicate with neighbours should not result in the applicant being disadvantaged by another individual's failure to respond.

The Panel discussed the availability of data, which SNH hold, on deer culls taken in season, out of season and at night at a local or national basis and concluded that this would be useful

information which could be made available on an annual basis. This information had previously been published in Deer Commission for Scotland Annual Reports. An example of the type of information is presented in Appendix 3.

**Recommendation 1:** SNH should review and publish authorisation guidance for applicants which provides clarity on the expectations and behaviours of both the applicant and potentially affected parties. The Panel recommend a more explicit requirement in the application process to evidence communication regarding previous efforts to find collaborative solutions. A worked example of an application outlining the level and nature of the detail sought would be helpful.

**Recommendation 2:** Given that authorisations have the potential to impact on neighbours and in the pursuit of the Better Regulation agenda, it is suggested that a summary of applications (minus any sensitive personal data) and their results should be made publicly available as there is no obvious reason why this information should not be in the public domain.

**Recommendation 3:** SNH should consider the annual publication of data on deer culls including out of season and night shooting.

### *Deer Management Planning*

When considering repeat applications, consideration should also be given to the extent to which longer term solutions have been discussed and agreed or whether discussions have taken place or moved forward e.g. to what extent other (non-authorisation) solutions are being identified in the medium to longer term. These measures may include collaboration with neighbours, planning, fencing etc.

Given that DMPs, as suggested in the Deer Code, should explicitly identify where damage is occurring and what neighbours want from collaborative deer management, it is reasonable that the plans should identify where such problems may/will occur and that therefore the applicant, if a signatory of a Deer Management Group (DMG) deer plan, should keep to the management approaches agreed jointly in the plan. If the application does not meet this test, then the applicant should be deemed to have failed the test. If it is a new problem, then informing neighbours is the first step in finding a solution.

Ongoing work within the DMG structure at the moment suggests that local networks are strengthening. Competent DMPs are being developed and therefore potential conflicts will be identified, communications made easier and potential solutions actively considered. On that basis, the Panel also recognised that it is reasonable for SNH to consider authorisations in the context of an agreed DMP. If cull targets have been collaboratively agreed and where it is recognised and acknowledged locally that out of season control has potential collective benefits, SNH should be able to take this in to account in any assessment of 'other reasonable means'.

Authorising out of season culls within the context of agreed overall cull targets is likely to better support collaborative and sustainable approaches to management. This is particularly relevant in the context of preventing damage from Red Deer stags where targeted culling out of season is likely to be more effective than taking culls over wider ranges in season to prevent damage occurring.

Recognising that most collaborative DMPs have a timeframe of 5-10 years, SNH should take into account any material change such as changes of ownership or management objectives when assessing the likely relevance of previously agreed management prescriptions.

**Recommendation 4:** Collaborative Deer Management Planning and Plans should be considered in assessing authorisation applications.

## Authorisations as a tool to prevent damage

### *Managing Impacts*

The Panel recognise that managing deer impacts can be challenging. In particular, there was clear evidence presented to demonstrate that managing impacts in woodlands is becoming an ever increasing challenge for public and private woodland managers alike.

During the Panel evidence session with Forest Enterprise Scotland, the complexity associated with increasing moves towards continuous cover forest systems; increased reliance on natural regeneration; use of a wider range of tree species; adaptation to changing silvicultural practices and managing the impacts of tree disease all demonstrate the need for an effective and ongoing strategy for dealing with the impacts of deer on a publicly owned and funded resource.

The Panel also recognised and agreed that due to the scale, nature and complexity of the task of protecting the National Forest Estate (NFE) from deer impacts throughout the year, there is a clear need to make use of out of season and night shooting authorisations as a routine means of preventing damage.

Evidence from submissions, supplemented by information from the cull statistics, showed that the number of deer culled at night and the demand for night shooting authorisations continues to grow. This, however, should also be seen in the context of an increasing total deer cull (figures provided by FES indicate their cull has increased from 23,300 deer in 07/08 to 32,500 in 14/15 in order to achieve lower deer densities and reduced deer damage). This FES increase in cull reflects a wider increase in woodland deer culls on a national basis in the private sector. Given FES are subject to the same drivers of change as the private woodland sector, it is likely that these increases in total woodland cull and culls under authorisation will grow in the short to medium term.

### *Efficacy of control*

What also became clear during the review was that there is actually very little published or available data on the efficacy and efficiency of different control techniques. The Panel could not find any published literature on the efficiency of night shooting as a tool, but it is clear from the practitioner perspective and from the views of SNH technical staff that it can be more efficient than daytime stalking. However, the Panel were unable to quantify this in any meaningful way, as we could find neither record of effort or resource expended by day / night nor any information in relation to the relative efficiencies of day and night shooting. The Panel recognised, however, that resource availability and therefore cost effectiveness do form part of the assessment process. Although this may not be explicitly stated in published guidance, the Panel recognises that this is a legitimate consideration.

### *Effort and other reasonable means*

The issues surrounding effort in season and during the day were discussed in some depth. In consideration of any application, it seems 'reasonable' to consider resource availability and

cost efficiency as part of the application and assessment process, but the challenge appears to relate to how this can be better defined, captured and more widely understood. Any definition of reasonableness has to have a social and economic component, as used more widely in society/law. Regarding the social element, the actions of a reasonable person have to include impact on others i.e. neighbours who are impacted by an activity. This brings the subject of communication into the consideration of reasonable actions by the applicant. The economic component could be expressed by saying that it is unreasonable to ask the applicant to undertake a loss-making effort in his/her attempts to limit damage by deer. In other words, financial considerations are a legitimate part of any consideration of 'reasonableness'.

Bearing in mind the wide variety of situations where resource effort and availability may be an issue, the Panel are clear that it is not SNH's role to be directing where the controller resource is secured from (e.g. farmers dealing with night time incursions of deer into crops for a short period of time; woodland managers who may be based many hundreds of miles away from an area where control is taking place and may only visit periodically to undertake intense culling for short periods of time; management of large forests and the resource constraints being placed through diminishing funding (private and public)), and there is a clear need to utilise the most effective and efficient methods of control.

Although greater clarity would clearly be desirable, it is very hard to see how this can be achieved universally. 'SNH discretion', as at present, may be the only workable option as the costs of culling vary considerably according to the deer species culled and local circumstances i.e. terrain, remoteness, travel time and size of forest block as well as the available resource and the level of effort as a result.

The Panel supports the SNH position that means-testing cannot form part of the assessment and is clear that the need to utilise the most effective and efficient methods of preventing damage is a legitimate basis for out of season and night shooting control.

**Recommendation 5:** SNH authorisations guidance should be updated to better reflect SNH's approach to assessing resources as part of the test of 'other reasonable means'.

### Opportunities for efficiencies in process

In reviewing the process, the Panel considered areas where efficiencies might be made whilst ensuring a sufficiently robust level of scrutiny is maintained. The Panel considered some potential efficiencies in the process relating to the need for on-going annual applications when, in actual fact, cases for applications covering longer timeframes could be made (e.g. large woodland areas) The Panel suggested that a reasonable duration for these extended authorisation periods may be between 3-5 years, subject to conditions such as providing annual returns and confirming the continued need for authorisation. SNH could request evidence of ongoing damage or potential for damage to occur, efforts made to control deer in season, effort expended under the Authorisation as well as numbers of deer controlled, should this be needed.

There is also an opportunity to review the prescriptive need for repeat site visits on a three year basis, allowing a risk-based approach and negating the need to expend unnecessary resources if circumstances have not materially changed. This might include applications supported by a competent deer management plan or long term forest plan, where there is clear evidence of effective discussion and local agreement on the use of authorisations, where the controllers have history of successful use of out of season provisions. Whilst

indicators of lower risk applications should be listed in SNH staff guidance, there will be an element of professional judgement required when assessing these risks.

Taking a light touch approach to regulating in certain circumstances as highlighted above seems to the Panel to fit the principles of better regulation for common place, well-established activities.

During discussion, the Panel also considered the unique relationship that FES has with SNH on this issue and the fact that they are the biggest recipients of authorisations through management of deer on the NFE. The Panel reviewed the supporting information that FES provided for out of season and night shooting in the Scottish lowlands district. The information was considered to be of a high quality and sufficiently detailed, at a landscape scale, to meet the requirements of the authorisation process, and the Panel highlighted the benefits of this type of data being more readily available

**Recommendation 6:** SNH should consider the case for increasing the period of site specific authorisations for longer than the current maximum 12 month period where there is evidence that ongoing use of authorisation for out of season or night shooting will be required.

**Recommendation 7:** SNH should consider taking a risk-based approach to site visits to avoid expending unnecessary resources, as opposed to prescriptively conducting repeat site visits on a three year basis.

## Night shooting - public safety and deer welfare

### *Public Safety*

The Panel heard that there was an increasing need to control deer in proximity to urban areas and in areas with high levels of public access. Views were expressed to the Panel that the use of authorisations to control deer at night in these areas constituted an elevated risk to public safety.

There was no evidence presented to show instances of distress, near miss or fear and alarm being caused to members of the public, nor of injuries or fatalities associated with the shooting of deer at night. Concerns were levelled on the basis that frequency of culling deer at night was increasing and that control in areas of higher public access would result in increased risk.

Views were expressed to the Panel that further increases in the use of night shooting would contribute to increased levels of poaching and other forms of wildlife crime. The Panel considered this in the context of other wildlife control which can legally take place without recourse to specific approval and concluded that the controls in place for the night shooting of deer were adequate to safe guard against these issues.

The Panel is clear that:

- night shooting is a legitimate tool to allow control to prevent damage in these areas
- responsibility for safety in using and discharging firearms in these circumstances lies with the controller.
- public perception is important around the culling of deer and risks of discharging firearms in areas of high public access.

In considering the safety aspects as well as the efficiency of night shooting, the Panel discussed the use of night vision equipment and scopes, and recognised that both the technology and availability of this equipment has changed significantly in recent years. There are a number of products which are commercially available and which are used effectively for controlling other wildlife species.

The challenge of culling deer in areas of high public access means that consideration has to be given to the safe, responsible and effective control of deer to prevent damage. Where daylight control proves ineffective then night shooting may be required.

**Recommendation 8:** SNH should consider working with training providers to develop training on control in areas of high public access in order (i) to address the likely prospect that more deer control will be necessary and (ii) to give the public further assurance of competence.

### *Deer Welfare*

The Panel recognise that deer welfare is a key consideration inherent in all culling activity and is therefore a key concern for all those culling deer and a critical area of wider public interest. The Best Practice suite of guidance is well developed in its outline of welfare risks, and means of mitigating risks to welfare, through culling activities.

While there is no empirical evidence to back up welfare concerns in relation to the culling of deer out of season or at night, views on the risks to deer welfare associated with these practices were expressed and the Panel do recognise that there is the potential for problems in these areas. If issues were to become evident in any particular case, SNH has the discretion to revoke or place conditions on any authorisation, or they can review the competence of any individual for the purposes of carrying out control.

The Panel heard that access to a trained dog to follow up wounded animals is required as a condition of a night shooting authorisation. The Panel also understood that some individuals or organisations have concerns that the current situation in Scotland - where there are no nationally recognised training standards for these deer dogs - could potentially represent a weakness in ability of the current system to deliver high standards of animal welfare. The Panel felt that dog training standards as embraced by other European countries represents a potential development opportunity for the sector in Scotland and that this should be considered by the Wild Deer Best Practice steering group.

Through the Wildlife and Natural Environment (WANE) Act 2011, the Scottish Parliament removed the right for specific individuals to undertake control of female deer on the basis of welfare concerns. The Panel recognise that those suffering damage have the right to apply for authorisation for the culling of females between 1<sup>st</sup> April and 31<sup>st</sup> August and that SNH has a presumption against issuing authorisation unless there are exceptional circumstances. The Panel support this position in that unless SNH can be satisfied that welfare issues can be effectively mitigated or there is a significant financial burden, then female deer should not be culled during the period of greatest welfare concern for dependent young.

A key area of welfare concern expressed through submissions to the Panel related to the General Authorisation and claims that the 'tight' period of female protection (1<sup>st</sup> April to 31<sup>st</sup> August) has been made without reference to evidence on deer welfare and demand from the deer sector, with culling of female deer as early as September being a particular concern. The Panel do not have evidence to recommend a specific change but are of a view that this is something SNH should review given the nature of the concerns.

**Recommendation 9:** SNH, in conjunction with the Wild Deer Best Practice steering group, should consider the role and training of dogs for use during night shooting.

**Recommendation 10:** SNH should consider undertaking research to gather more objective data from those undertaking culls on aspects of welfare and efficacy associated with night shooting.

**Recommendation 11:** SNH should consider undertaking work to establish whether there would be benefits for safety, efficacy and deer welfare in permitting use of night vision and image intensifying scopes for culling deer. (NB - Any change to allow the use of night sights for deer would require a change to the Deer (Firearms etc) (Scotland) Order 1985)

**Recommendation 12:** SNH should review the demand for, and the likely welfare implications of, April and September shooting of females, and consider any required changes to the seasonal restrictions currently placed on the General Authorisation as well as on the conditions currently generally placed on the shooting of females under Specific Authorisations.

*For Future Reference* - The Panel are also mindful of the discussion during the passage of the WANE Act, where the proposals associated with the right to shoot deer at night could be linked to a demonstration of skills and knowledge of night shooting. The Panel recognise the benefits of additional training and/or competence in this area, which could result in deregulation of the night shooting process, with the associated benefits for preventing damage to Scotland's woodland resource.

### **Both the ease and the difficulty associated with securing authorisations**

The underlying legislation provides a mechanism to address or prevent damage caused by deer. Changes introduced through the WANE Act mean that the provisions and mechanisms for how this is delivered are at the discretion of SNH. There a number of options open to SNH in how this is delivered through the use of authorisations which may be general or specific in nature.

The evidence presented on this issue largely related to the legislative context and use of general authorisation which could effectively remove the current close seasons. SNH use of general and specific authorisations reflects the legislative position and policy provisions following the WANE Act with the tightening of provisions around control of female deer between 1<sup>st</sup> April and 31<sup>st</sup> August.

In reviewing how these provisions are currently applied, the Panel have also considered the context of and alignment with, public policy objectives on welfare and wildlife management and with due consideration of the Deer Code and current work in development of DMPs in upland DMG areas.

There was a strong view from a number of submissions that the current legal framework (particularly close seasons) inhibits delivery of environmental objectives by restricting land managers' ability to prevent damage at certain times of year, and that there was an inherent illogicality that these restrictions only apply at certain times of year, for certain land types and apply differently to different people. This distinction in land type is derived from the 1996 legislation where distinction is made between different land types such as agricultural land, enclosed and unenclosed woodland and the natural heritage.

The Panel recognised that SNH's role is to secure the conservation, control and sustainable management of deer in Scotland; this means they have to consider the size, density and impact of the deer population on the natural heritage, the needs of forestry and agriculture and the interests of landowners / occupiers. Although the Deer Legislation does not place a specific requirement on SNH to consider the socio-economic impact of authorisations for close season or night shooting, SNH do now have to consider the Regulators' duty placed upon them under the Regulatory Reform (Scotland) Act 2014 to contribute to achieving sustainable economic growth.

The Panel are aware that SNH, in making regulatory decisions, seek to apply the balancing duties enshrined in the legislation to take account of factors including the size and density of the deer population and its impact on the natural heritage, and the interests of owners and occupiers of land. Although the legislation does not explicitly require SNH to consider an authorisation's socio-economic impact, the application of these balancing duties should reflect the needs of those seeking to prevent damage and the impacts of culls on revenues from sport or venison production from those affected by management of this common resource.

These balancing duties do not override primary aims and purposes for the organisation in relation to the natural heritage, or in relation to deer, as set out in Section 1(1) and 1(1A) of the Natural Heritage (Scotland) Act 1991. However, the duties are designed to ensure that, where appropriate, SNH does not focus upon its primary aims and purposes to the exclusion of all other considerations. The importance which should be placed on these interests, relative to SNH's aims and purposes, is a matter for SNH's discretion.

It is often impossible to predict the economic costs and benefits to either the applicant or a neighbour of out of season shooting. The economic costs and benefits to both parties need to be considered and, where it is impossible to predict the impact on neighbours an initial authorisation could be granted. Neighbours should then be asked to provide evidence of any adverse economic impacts should there be any.

**Recommendation 13:** SNH should develop an audit process for the assessment of balancing duties and should provide this when refusing or applying conditions to any authorisation.

### General versus Specific Authorisations

During the Panel's discussions and in gathering views from stakeholders, the inconsistency of approach and the current interpretation of the Deer (Scotland) Act in relation to different land types did emerge as an issue for further consideration.

The key issue relates to how the Natural Heritage and Woodlands which are unenclosed, are treated differently to agricultural land and enclosed woodlands under the provisions of Section 5 (6) and whether there is any strong logic or rationale for why these land types should be treated differently.

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<sup>13</sup> "balancing duties" <http://www.snh.gov.uk/docs/A406599.pdf>

The Panel are aware that changes to Section 5 of the Deer (Scotland) Act which cover the close seasons, following the passing of the WANE Act in 2011, mean that any deer culled out of season are now culled under authorisation from SNH. The previous exemption for the rights of owners and occupiers to cull deer out of season to prevent damage within improved agricultural ground and enclosed woodland was removed.

As a result, SNH now issue authorisations which can be either general or specific in their nature. The intention of the WANE Act was, and continues to be, to issue a General Authorisation to owners and occupiers to cull deer for the purpose of preventing damage to agricultural land and enclosed woodland, albeit with some specific restrictions to ensure the period of greatest juvenile dependency is protected (considered in welfare section).

This enabling and targeted approach to issuing authorisations fits with SNH's understanding of the Better Regulation agenda, and that the light-touch approach to regulation that General Authorisation provide is based on the following principles:

- That General Authorisations cover relatively common activities addressing well-established issues or situations.
- That the actions permitted follow relatively standardised practices.
- That General Authorisations cover situations where there may be no other satisfactory solution.

The Panel have considered whether these same principles could and should be applied to situations concerning damage to the Natural Heritage and unenclosed woodlands.

The Panel considered the changes brought in through the WANE Act which give SNH discretion to align approaches to land types. The Panel recognised the increasing importance and value attached to Scotland's environment and natural heritage and that changing provisions for deer control through general licence may support this. The Panel concluded that changes of this nature were so significant that any consideration of change to this aspect goes beyond a review of authorisation processes and should form part of any wider review of deer management.

**Recommendation 14:** The Panel recommends moving towards a streamlined approach to the control of deer out of season and at night, but does not, at this time, propose significant changes in the use of Specific or General Authorisations. Moving forward, SNH should consider to how best to align the different approaches to land use and damage type that are currently in place.

### **Use of authorisations restricting private sector opportunities to access stalking on public land**

The Panel heard concerns that the use of night shooting authorisations, primarily by contractors on the National Forest Estate (NFE), is denying local controllers access to recreational / vocational stalking opportunities. The Panel recognise the strength of feeling and interest in this area, and are firmly of the view that vocational and recreational stalkers have a potentially increasing role to play in managing Scotland's deer on private and public land. The Panel heard how FES are creating extra opportunities and have recently developed their permissions system to make better use of this resource whilst ensuring public investment is protected and procurement processes are followed.

The Panel did consider and discuss some of the issues associated with controller type, and the level of effort, costs and effectiveness associated with the different management models currently used on the National Forest Estate. The Panel recognised that information on effort of in season and daytime control by controller type was not available through FES reporting mechanisms

The Panel recognised that whilst this may be a legitimate concern, they did not feel that any potential recommendations were an issue for the authorisation process per se, rather it is a socio-political issue which the FC should respond to through other means. SNH in its advisory capacity may highlight to FES that these concerns and potential opportunities have come to light in this review.

The Panel are aware of the desire of the Scottish Government to help communities, be they communities of place or communities of interest, to look after local assets and to participate in decisions that affect them. The Scottish Parliament has recently passed the Community Empowerment (Scotland) Act 2015 to strengthen the powers that communities have to act and get involved.

In recognition of this, when considering the shared resource that deer represent on publicly owned land, and the interest, desire and opportunities that exist for more communities to get actively involved, the Panel suggest that SNH as a land owner and licensing authority and FES as a land owner should:

- listen to the needs of local deer management fora and look at the skills, knowledge, energy and ideas they can bring to the table;
- continue to identify more opportunities for competent controllers to become involved in managing deer on their land holdings in a cost effective way.

The Panel are also aware that there will also soon be the opportunity for communities to formally request the right to play a more proactive role in how services are planned and delivered (through a 'Participation Request') and that these powers are expected to come into force in late 2016.

The Panel would therefore flag to SNH and FES that deer management activity on the NFE and the SNH licensing service for deer will need to consider this statutory participation request option.

## Part 3 - Conclusions

1. In reviewing SNH's approach to the licensing service of administering deer authorisations the Panel considered the legislative and policy context in which deer management is undertaken, the challenges that land managers face throughout Scotland in developing more integrated approaches to land management and the expectations that a wide range of public interests will be delivered.

**The Panel have concluded that the processes in place to administer deer authorisations are largely fit for purpose. The Panel have provided some recommendations for SNH to consider on aspects of process which would support SNH and land managers in the better delivery of this service.**

2. The Panel assessed a wide range of data provided by SNH which helped identify some trends in use of authorisations over time. The most significant of these were the increase in demand for night shooting authorisations and number of deer culled at night to prevent damage to woodland interests. The drivers of changes were also picked up in some of the submissions received which highlighted some of the challenges. These included: issues with porosity of fencing and meeting definitions of enclosed land, a move towards a continuous cover approach to woodland management, a greater species mix necessitated by the need to safeguard against pest and tree disease and the grant and incentive-based requirements to protect public investment.

**This evidence clearly demonstrated the importance of and need to ensure out of season and night shooting control is available to support key public policy objectives as well as private interests. Panel recommendations seek to affirm the need for this.**

3. The Panel recognise that changes brought in through the WANE Act give SNH discretion to better align or remove anomalies in the current approach which treat land types differently. Applying different licensing approaches through general or specific authorisations for types of land or person have been considered by the Panel. The Panel considered this, acknowledging the 2005 review of close seasons and subsequent consideration of legislation through the WANE and Land Reform Acts and the ongoing Review of Deer Management which is due to report to the Scottish Government in October 2016.

**The Panel does not, at this time, propose significant changes in the use of specific or general authorisations. The Panel are however supportive of moving towards an approach where the control of deer out of season and at night is regarded as an accepted component of deer management planning. The Panel recognise that for this to happen, approaches to deer management planning need to have matured and be sufficiently robust to handle the issues associated with integrating different management objectives. SNH should give further consideration to the different approaches to land use and type currently in place.**

4. Evidence presented through the submissions and through the evidence sessions highlighted opportunities for the authorisation process to better support collaborative approaches to deer management and better integration of management objectives. Many of these opportunities related to effective communication including accessibility, availability and visibility of information at a local and national level.

**The authorisation process cannot and should not be the tool to reconcile different or competing interests. The process can, however, influence and support approaches and behaviours to promoting collaborative approaches and management in line with the Deer Code. Panel recommendations seek to support this approach.**

**The Panel considered the openness and transparency of the authorisation process and have identified proposals which will provide both contextual information on out of season and night shooting culls and better support local collaborative approaches to deer management.**

5. The Panel specifically considered two tests which SNH are required to apply under the Deer (Scotland) Act 1996 relating to damage and 'other reasonable means' of control.

**Given the need for applicants to better understand SNH requirements for these tests, and in particular the 'other reasonable means' test, the Panel recommend that guidance is updated to better articulate and provide clarity to applicants on these important aspects.**

6. The Wild Deer Best Practice suite of guidance is an important resource in providing information for practitioners. Changes in legislation and public policy have meant that updates are required.

**The Panel believe that this important resource should be reviewed and updated in light of legislative changes and that further work might be done to articulate the tests and definitions of damage and 'other reasonable means'. The Panel also recognise the potential benefits from further guidance being developed on Deer Management Planning approaches which highlights that out of season and night shooting are an integral part of modern deer management planning, and should not be regarded as exceptional or unusual within the current legislative framework.**

7. The Panel recognise the particular challenges that land managers face in managing deer impacts and preventing damage, particularly in the context of important environmental and forestry policy aspirations at a time of reduced availability of public and private funding.

**Effective control of deer is key to delivering a range of land management objectives. Changes in woodland management such as moves towards a continuous cover approach, the need for a greater species mix to mitigate effects of pests and disease, and efforts to bring native woodland into better condition, as well as increased effort and investment to improve the condition of natural heritage interests, are likely to result in increased need for out of season and night shooting of deer in the future. This will strengthen the case for the recommendations presented here.**

## Appendix 1 Deer Seasons, Specific and General Authorisations

The statutory close seasons for deer are set out in the The Deer (Close Seasons) (Scotland) Order 2011 <http://www.legislation.gov.uk/ssi/2011/417/made>

This table sets out the relationship between Open Seasons set by Order and both Specific and General authorisations as they are currently applied by SNH.

<b>Species</b>	<b>Sex</b>	<b>Open Season</b>	<b>Specific Authorisation - 5(6) (b) permits culling to prevent damage to unenclosed Woodland, Natural Heritage and Public Safety.</b>	<b>General Authorisation - 5(6) (a) permits culling to prevent damage to agricultural land and enclosed woodland.</b>
Red	Stags	1st July – 20 Oct	Any time of year	Any time of year
	Hinds	21 Oct – 15 Feb	1 Sept – 31 March <sup>1</sup>	1 Sept – 31 March <sup>2</sup>
Sika	Stags	1st July – 20 Oct	Any time of year	Any time of year
	Hinds	21 Oct – 15 Feb	1 Sept – 31 March <sup>1</sup>	1 Sept – 31 March <sup>2</sup>
Fallow	Bucks	1 Aug– 30 Apr	Any time of year	Any time of year
	Does	21 Oct – 15 Feb	1 Sept – 31 March <sup>1</sup>	1 Sept – 31 March <sup>2</sup>
Roe	Bucks	1 Apr – 20 Oct	Any time of year	Any time of year
	Does	21 Oct – 31 Mar	1 Sep – 31 March <sup>1</sup>	1 Sept – 31 March <sup>2</sup>
Calves / Kids		Same as female deer	Same as female deer	Any time of year

<sup>1</sup> Specific Authorisations can, under the legislation, be granted for any time of year but are generally not granted for female deer between 1 April and 31 August unless there is a strong case for doing so i.e. where the damage being caused may outweigh the potential welfare risks of orphaning dependents. These tend to be exceptional cases and SNH have only issued a limited number on that basis (e.g. for airports, soft fruit farms).

<sup>2</sup> A Specific Authorisation is required to cull female deer between 1<sup>st</sup> April and 31<sup>st</sup> August.

## Appendix 2 Deer Panel Written Submissions

<b>The following organisations were invited to submit evidence:</b>	<b>Response received:</b>
Association of Deer Management Groups	Yes (Joint response with LDNS)
BASC	Yes
British Deer Society	Yes
Centre for Ecology & Hydrology, Edinburgh	No
Cairngorms National Park Authority	No
Mark Seed - Commercial Forester / Borders DMG	No
Community Land Scotland	Yes
Confor: Confederation of Forest Industries	No
COSLA (Convention of Scottish Local Authorities)	No
Forestry Commission Scotland	No
Forest Enterprise Scotland	Yes
Forest Policy Group	No
Game & Wildlife Conservation Trust	No
James Hutton Institute	No
John Muir Trust	Yes
LANTRA	No
Loch Lomond and The Trossachs National Park Authority	No
Lowland Deer Network Scotland	Yes (Joint response with ADMG)
Mountaineering Council of Scotland	No
National Wildlife Crime Unit	No
National Farmers Union Scotland	Yes
National Trust for Scotland	Yes
Ramblers Association	No
RSPB	Yes
Scottish Association for Country Sports	Yes
Scottish Countryside Alliance	Yes
Scottish Land and Estates Ltd	No
Scottish Wildlife Trust	No
Scottish Country Sports Tourism Group	No
Scottish Government - Wildlife Management Team	No
Scottish Gamekeeper's Association	Yes
SSPCA	No
Scottish Wildlife Trust	No
Transport Scotland	No
Veterinary Deer Society	No
Venison Working Group/Scottish Game Dealers Association	No
Wild Scotland	No
Woodland Trust Scotland	No
Friends of the Earth - Scotland	No
<b>The following individuals/organisations also made submissions:</b>	
Philip Ratcliffe	
Susan Steven	
Thomas MacDonnell	
UK Scent Hound Association	



**Number of Deer Culled By Authorisation Type by Deer Management Group Area**

**DMG NAME**

Type	Purpose	Red			Sika			Roe			Fallow		
		Male	Female	Calf	Male	Female	Calf	Male	Female	Kid	Male	Female	Fawn
Night Shooting 18(2)	Woodland												
	Agriculture												
	Public Safety												
Out of Season 5(6)	Unenclosed Woodland												
	Natural Heritage												
	Public Safety												
Out of Season 5(6) (Female)	Woodland												
	Agriculture												