

# ADMG Analysis of Deer Working Group (DWG) Report

## Part One - Wild Deer in Scotland

### Section 1 Legal Status, Hunting Rights and Regulatory Framework

1. The DWG recommends that the Scottish Parliament should amend the Deer (Scotland) Act 1996 to replace the references in the Act to the Deer Commission for Scotland, Secretary of State and the Houses of Parliament with Scottish Natural Heritage, Scottish Ministers and the Scottish Parliament respectively (*paragraph 72*).

In relation to this and many of the following recommendations, ADMG would be in favour of the rationalisation of existing legislation to add clarity and resolve anomalies but the system has operated adequately over many years with such anomalies in place so we do not consider these improvements a priority or sufficient justification on their own for new legislation.

### Section 2 National Distributions, Populations and Culls

2. The DWG recommends that Scottish Natural Heritage should develop its own more detailed distribution maps for wild deer in Scotland; that Scottish Natural Heritage should more accurately report the basis of national population estimates for wild deer which it publishes; and that Scottish Natural Heritage should make clear that the national cull statistics which it publishes are based only on the numbers reported through cull returns (*paragraph 63*). **Agreed.**

### Section 3 Public Authority, Functions and Interests

3. The DWG recommends that section 1 of the Deer (Scotland) Act 1996 should be amended to make explicit that Scottish Natural Heritage has distinct functions under the Act, to modernise the stated purpose of the Act to reflect contemporary public policy objectives, and to convert the list of interests to be taken into account into an inclusive rather than exclusive list (*paragraph 37*).

We note some subtle changes in terminology in this section of the report. "To further the conservation of deer native to Scotland" is omitted; to "further" sustainable deer management is now to "promote". While not fully understanding the thinking behind these changes, we are concerned that they have the effect of downplaying the value of deer in economic and social terms, as a resource.

## Part Two - Public Safety and Deer Welfare (in all circumstances)

### Section 4 How wild deer can be killed lawfully

4. The DWG recommends that the Scottish Government should make a clear commitment to end the use of lead bullets to shoot deer in Scotland, carry out the necessary research and promotion to enable that change to be made after a transition period and, as a part of that, amend The Deer (Firearms, etc.) (Scotland) Order 1985 so that the specifications in paragraph 3(a) of the Order are suitable for the use of non-lead bullets (*paragraph 21*).

ADMG agrees with this objective and the environmental and food safety reasons behind it but notes that a reasonable transition period is required to allow further improvement in non-lead ammunition at all common calibres used for deer. It is also noted that there remains some differential between the cost of lead and non-lead ammunition which makes it more difficult to persuade people to make the change.

5. The DWG recommends that the use of a shotgun to kill wild deer should be made subject to authorisation by Scottish Natural Heritage through a new provision in the Deer (Scotland) Act 1996, that the owner or occupier of any land should be able to apply for such authorisation and that the terms of paragraph 4 of The Deer (Firearms, etc.) (Scotland) Order 1985 should be amended accordingly (*paragraph 31*).

ADMG does not consider that shotguns are an appropriate means to shoot deer and lead to an unacceptable level of wounding. If circumstances exist where rifles cannot be safely used and shotguns are the only means of control, eg in urban/peri-urban areas, then we strongly agree that an authorisation approach is necessary.

6. The DWG recommends that the Scottish Government should instruct Scottish Natural Heritage to carry out the planned trials into the use of night sights without further undue delay (*paragraph 38*). **No objection to trials but see below.**
7. The DWG recommends that, subject to the successful outcome of Scottish Natural Heritage's trials, paragraph 5(b) of The Deer (Firearms, etc.) (Scotland) Order 1985 should be repealed to allow the use of night sights to shoot deer (*paragraph 40*).

**It is difficult to be sure of the sex or age of a deer in a night scope and also to be sure of a visible safe backstop for a rifle shot. ADMG has significant concerns that the use of night sights may pose risks to human safety and the safety of other animals due to the danger of mis-identification.**

#### Section 5 Times of year when deer can be killed lawfully

8. The DWG recommends that The Deer (Close Seasons) (Scotland) Order 2011 should be replaced with a new Order in which the close season for females of each species is set to start on a date in the period 1st to 15th April (inclusive) and end on a date in the period 31st August to 15th September (inclusive), and in which no close seasons are set for males of each species (*paragraph 67*).

**In relation to hinds ADMG favours the proposal to allow delay of the end of the close period into September for the reasons given but is concerned that any further slippage in the start of the closed period would increase the risks of compromising deer welfare so close to calving. Late term abortion in April, within a few weeks of calving, where the foetus has to be separately despatched, will also be most distasteful to many deer managers. In regard to stags, allowing culling throughout the year is also a risk to welfare in that it would lead to disturbance during the latter months of winter when, post rut, male deer are likely to be in depleted condition with few reserves.**

9. The DWG recommends, firstly, that section 5(6) of the Deer (Scotland) Act 1996 should be amended to apply to any land and to cover public interests of a social, economic and environment nature; and, secondly, that section 5(8) should be repealed (*paragraph 79*).

**Agreed in respect of 5(6). We would suggest that 5(8) be retained as a useful mechanism in case further change in close seasons may be required.**

#### Section 6 Times of day when wild deer can be killed lawfully

10. The DWG recommends that section 18(2) of the Deer (Scotland) Act 1996 should be amended to refer to both owners and occupiers, to be applicable to any land and to cover public interests of a social, economic and environmental nature (*paragraph 38*). **Agreed.**

#### Section 7 How and when wild deer can be taken lawfully

11. The DWG recommends, firstly, that section 41(2) of the Deer (Scotland) Act 1996 should be amended or replaced so that the taking of wild deer requires to be authorised by Scottish Natural Heritage and secondly, that section 37(5) should be amended at the same time to require Scottish Natural Heritage to produce a code of practice for the taking or live capture of wild deer (*paragraph 26*). **Agreed.**

#### Section 8 Occupiers, Authorised and Competent Persons

12. The DWG recommends that the Deer (Scotland) Act 1996 should be amended so that the statutory rights of occupiers to prevent damage by wild deer should apply to the occupiers of any type of land and cover public interests of a social, economic and environmental nature (*paragraph 19*). **Agreed.**
13. The DWG recommends, firstly, that section 37(1A) should be repealed so that all out of season shooting authorised by Scottish Natural Heritage requires to be carried out by a person judged fit and competent for that purpose by Scottish Natural Heritage, and secondly, that section 10(4) should be amended so that an authorised person requires to be judged both fit and competent (*paragraph 36*).

Agreed. Presumably the fit and competent requirement would also apply in respect of night shooting in or out of season?

14. The DWG recommends that the Scottish Government should make a clear statement of its commitment to establishing a register of persons competent to shoot deer in Scotland under section 17A of the Deer (Scotland) Act 1996 and develop proposals for a register as set out in this Report (*paragraph 84*). **Agreed.**
15. The DWG also recommends that section 17A of the Deer (Scotland) Act 1996 should be amended at an early stage as set out in this Report, to enable appropriate secondary legislation to bring the recommended register into effect (*paragraph 85*).

Agreed. In section 8 para 74 it is proposed that it should be an objective that all persons shooting deer in Scotland should hold training to DSC 1 standard. We commend and support this objective but would look for confirmation that guests and tenants would be excluded from that requirement if accompanied/supervised by a trained person.

#### Section 9 Prevention of Suffering and Wildlife Crime

16. The DWG recommends that consideration should be given to having a provision in the Deer (Scotland) Act 1996 which provides exemptions to protect human safety where a deer poses an immediate threat, with those exemptions being similar to the exemptions in section 25 of the Act to end the suffering of a deer (*paragraph 16*). **Agreed.**

#### Section 10 Wild Deer and Diseases

17. The DWG recommends that the Scottish Government should ensure that the role of wild deer in increasing the risk of Lyme disease is given greater prominence in its policies for deer management in Scotland, and that greater priority is given to that risk in considering the need to reduce deer densities in locations across Scotland (*paragraph 33*).

ADMG has taken advice from our scientific adviser, a senior staff member at JHI, on this. He has commented as follows:

*"I would argue that the leap they make from deer sustaining a large tick population to deer increase Lyme disease incidence is a significant one. You could construct an argument the other way – at high grazing levels there are fewer voles, which are the main competent host. I think the science is still out on this."*

See also the BDS information sheet "Lyme Disease and ticks" which suggests that, once bitten, deer produce antibodies which cause ticks to be purged of the *Borrelia* bacteria which causes Lyme Disease in humans.

<https://www.bds.org.uk/index.php/advice-education/lyme-disease>

ADMG would therefore urge a proportionate evidence-based approach to any judgement which may be made about linkage between wild deer and Lyme Disease in humans. The report itself notes the lack of evidence. Further education of users of the countryside is required as to how to take precautions against the risks of tick bites.

18. The DWG recommends the Scottish Government and its agencies should, following the current Scottish Deer Health Survey, develop and maintain an ongoing national programme to monitor wild deer in Scotland for existing and potential diseases (*paragraph 36*). **Agreed.** This would be very valuable. We would also recommend biosecurity measures against the risk of introducing diseases such as Chronic Wasting Disease and tick-borne diseases other than Lyme Disease from outwith the UK.

## Section 11 Wild venison and food safety

19. The DWG recommends that The Licensing of Venison Dealers (Prescribed Forms etc.) (Scotland) Order 1984 should be replaced by a new Order that requires clearer and more robust information on the prescribed form about the source of any purchases or receipts of wild venison (*paragraph 21*).

**Agreed.** This could be helpful to the venison industry in demonstrating traceability as a key element of food standards.

20. The DWG recommends that section 34 of the Deer (Scotland) Act 1996 should be amended to empower those with the authority under that section, to require a licensed venison dealer to submit a return summarising their throughput of wild deer carcasses during a period not exceeding three years and in a form to be prescribed (*paragraph 55*). **Agreed.**
21. The DWG recommends that the Scottish Government should review sections 33-36 of the Deer (Scotland) Act 1996 that cover the licensing of dealing in venison, with a view to making changes in addition to the related recommendations in this Report, so that the arrangements are fit for purpose in contemporary circumstances (*paragraph 60*). **Agreed.**
22. The DWG recommends that section of 40 of the Deer (Scotland) Act 1996 dealing with cull returns should be amended by inserting 'and the use of the carcasses' at the end of section 40(1) (*paragraph 65*). **Agreed.**
23. The DWG recommends that the Scottish Government should ensure that the requirement for those supplying venison to Approved Game Handling Establishments to be able to demonstrate Trained Hunter status under EU regulations is enforced (*paragraph 67*). **Agreed.**

## Section 12 Wild Deer and Other Deer

24. The DWG recommends that section 43 of the Deer (Scotland) Act 1996 should be amended at the end of the definition of farmed deer in s.43(4) to include 'and be clearly marked to show they are kept as such' (*paragraph 21*). **Agreed.**
25. The DWG recommends that the Animals (Scotland) Act 1987 should be amended to establish clearly that an owner or occupier of land can shoot a stray farmed deer on that land to prevent damage by the deer, where that is the only reasonable practical means in the circumstances to detain the stray deer under the Act (*paragraph 28*). **Agreed.**
26. The DWG recommends that there should be a legal requirement for all deer that are owned as private property and not farmed deer or deer in zoos, to be tagged to identify them as private property (*paragraph 46*). **Agreed.**
27. The DWG recommends that the Scottish Government should give serious consideration to the introduction through the Animal Health and Welfare (Scotland) Act 2006, of a scheme to require an owner of deer to have a licence for the keeping of deer as private property that are not farmed deer, deer in zoos nor muntjac deer (*paragraph 51*). **Agreed.**
28. The DWG recommends that either the Deer (Scotland) Act 1996 or the Wildlife and Countryside Act 1981 should be amended so that any release of captive red deer and captive roe deer into the wild requires to be authorised by Scottish Natural Heritage (*paragraph 62*). **Agreed.**
29. The DWG recommends that the Scottish Government and its agencies should agree and apply practical criteria to identify and correct situations where deer enclosed by deer-proof barriers are being managed as if they are wild deer, when it is clear from the assessment that they should be managed as captive deer (*paragraph 83*). **Agreed.**

## Part Three - Damage to Public Interests (in particular circumstances)

### Section 13 Damage by Wild Deer

30. The DWG recommends that Scottish Natural Heritage should develop fuller statements of the public and private land use interests that can be protected under the Deer (Scotland) Act 1996, and that Scottish Natural Heritage should also ensure that the Wild Deer Best Practice guidance on damage is replaced (*paragraph 18*). **Agreed in the interests of clarity and consistency.**
31. The DWG recommends that the Scottish Government should ensure that Scottish Natural Heritage has the capacity to encourage complaints of unacceptable levels of damage by wild deer and to respond by taking effective action where warranted to reduce the damage (*paragraph 33*).

**It seems somewhat unnecessary to solicit complaints. Complaint mechanisms exist and are easily discovered.**

32. The DWG recommends that the phrase “or steps taken or not taken for the purposes of deer management” should be repealed from sections 6A(2) and 7(1) of the Deer (Scotland) Act 1996, and that consideration might be given to whether an appropriately termed and practical power for Scottish Natural Heritage to reduce deer control on a property might be introduced through a new section in that Act (*paragraph 49*).

**Presumably this is to address suggestions of overculling without evidence of it being necessary. We agree that excessive levels of cull might be against the public interest in certain circumstances. We favour this proposal which balances out the opportunities provided in the legislation to increase culls on environmental grounds with constraining them on economic or social grounds. Comparable levels of evidence should be required in either circumstance.**

### Section 14 Agriculture and Forestry

33. The DWG recommends that Scottish Natural Heritage should take a far more focused approach to identifying the current extent of damage to agriculture by wild deer in different parts of Scotland and take action to tackle the local issues involved (*paragraph 17*).

**We have no particular comment to make on what is largely a lowland matter although present legislation provides for agricultural damage and the rights of occupiers to protect themselves against damage. It is noted however that SNH have taken a problem focussed approach to agricultural damage, for example in Aberdeenshire and at Flanders Moss in the Carse of Stirling.**

34. The DWG recommends that the Scottish Government should recognise much more fully than at present, the need for changes to the current statutory and non-statutory system for the management of wild deer in Scotland if the Scottish Forestry Strategy 2019-29 is to be implemented successfully (*paragraph 77*).

**The report rightly notes that an increase in woodland cover represents an expansion in deer habitat and is likely to lead to a continuing increase in deer populations as woodland expansion accelerates further. Where woodlands and plantations are enclosed with a well-maintained fence deer can be excluded but, if they become established within fenced woodlands, control sufficient to prevent damage to young trees above tolerable level can be difficult to achieve. Some have called for reductions in deer numbers in the open range sufficient to allow woodland expansion without fencing. This would require near eradication of deer of all species and fencing would still be required to exclude domestic livestock as well as hares, rabbits and feral goats. These are practical considerations rather than a matter of statutory change and considering deer impacts alone is to oversimplify situations where multiple factors are at work.**

## Section 15 Public Safety

35. The DWG recommends that the Scottish Government should be working to ensure that the UK Department of Transport form used by Police Scotland to record Personal Injury Accidents (ST19), is modified for use in Scotland to include a separate category for deer (*paragraph 11*). **Agreed.**
36. The DWG recommends that the Scottish Government should ensure that a more appropriate level of attention and resources is applied to addressing the continuing rise in road traffic accidents in Scotland involving wild deer (*paragraph 24*). **Agreed.**
37. The DWG recommends that Scottish Natural Heritage should be paying much more attention to the control of local deer densities alongside lengths of public roads with frequent road traffic accidents involving wild deer (*paragraph 44*).

This is also a matter of road design and increased traffic. If trunk road landscaping involves the creation of deer habitat through roadside planting, deer are likely to be attracted to it even where roadside deer control is implemented, to the extent that control must be ongoing indefinitely. Similarly, roadside deer fencing, unless excluding deer absolutely, can have the effect of trapping deer on the road rather than preventing their access to it. Winter gritting can also draw deer to roads where the salt is the attraction.

## Section 16 Natural Heritage

38. The DWG recommends that the Cairngorms National Park Authority and Scottish Natural Heritage should adopt and enforce a clear policy against the establishment of any populations of Scotland's two non-native deer species, fallow and sika deer, in the Cairngorms National Park (*paragraph 47*). **Agreed.**
39. The DWG recommends that the Cairngorms National Park Authority and Scottish Natural Heritage should have a much greater focus on the need to improve the management of wild deer in the Cairngorms National Park, to reduce deer densities in many parts of the Park to protect and enhance the Park's biodiversity (*paragraph 52*).

ADMG considers that a great deal of attention has been given to deer impacts in the CNP and that very substantial deer reductions have been achieved and are ongoing. The CNPA deer policy aligns with the Deer Working Group's recommendation that deer populations should not exceed 10 per sq km. However, since the DWG recommendation is that impacts not numbers should be the yardstick for effective deer management, and, a priority being woodland condition and expansion, it may be noted from the NWSS data (now 8-13 years old and deer numbers have been reduced in the interim) that 87% of woods in the Speyside area are at low to medium impacts outwith designated sites, 77% within designated sites, substantially better than the SBS 2020 target of 60%.

40. The DWG recommends that the Scottish Government should remove the current references to deer from the Muirburn Code and end financial support for muirburn for wild deer through its Rural Payments and Services Agri-Environment Climate Scheme (*paragraph 73*).

ADMG considers that very little muirburn is carried out specifically and exclusively for deer and does not consider this to be a live issue.

41. The DWG recommends that the Hill Farm Act 1946 should be amended to make it an offence to carry out muirburn for wild deer without a licence from Scottish Natural Heritage (*paragraph 74*).

This would not be consistent with the provisions for muirburn for other purposes. The Muirburn Code should be applicable for all types of muirburn and the requirement to follow the Code should obviate the need for creating a specific offence in narrow circumstances. Why create a new anomaly?

We would add that there has been a high level of cooperation between deer managers and gamekeepers and the Scottish Fire Service in tackling fires in recent years and that estate off road equipment is freely made available to assist at wild fires.

#### Section 17 Non-Native Deer Species

42. The DWG recommends that Scottish Natural Heritage should develop its own maps of the existing distribution of fallow deer in Scotland and implement a clear strategy to prevent the further spread of these fallow deer populations, including the use of Scottish Natural Heritage's regulatory powers under the Deer (Scotland) Act 1996 if necessary (*paragraph 15*).

Agreed but we would draw a distinction between long naturalised fallow deer and much more recently introduced and expansive sika which hybridise with native red deer in some circumstances, being a significantly greater threat.

43. The DWG recommends that Scottish Natural Heritage should be more actively raising awareness that releasing or allowing fallow deer to escape from captivity is an offence, and that Scottish Natural Heritage should be taking enforcement action in any situation where that appears to have happened (*paragraph 19*).

Agreed. DMGs generally have a good understanding of non-native deer species and, where they are a problem, they feature continually on meeting agendas for discussion and cull planning.

44. The DWG recommends that Scottish Natural Heritage should be taking a clearer, more robust approach to minimising the spread of sika deer in Scotland and should be targeting areas where Scottish Natural Heritage intend to prevent or slow colonisation by sika deer (*paragraph 41*).

Agreed but the practical limits of what can be achieved must be recognised. Sadly, the opportunity to eradicate escaped Japanese Sika deer was lost long ago. The containment of fallow deer may be more realistic.

45. The DWG recommends, firstly, that Scottish Natural Heritage should take a more rigorous approach to identifying sites with captive muntjac and knowing the numbers and sexes of muntjac and adequacy of enclosures at the existing sites licensed to keep muntjac, and secondly, that Scottish Natural Heritage should have a clear policy of not issuing any further licences for keeping muntjac in captivity unless exceptional public interest can be demonstrated (*paragraph 55*).

Agreed. Unlike the Sika situation a well-planned approach to preventing colonisation by Muntjac in Scotland should be effective.

46. The DWG recommends that Scottish Natural Heritage should be maintaining a more active focus on the likely routes by which muntjac deer may colonise Scotland from the north of England, and that Scottish Natural Heritage should have an annual programme of raising awareness about muntjac deer to reduce the risks of muntjac deer becoming established in Scotland (*paragraph 65*). Agreed.

#### Section 18 Deer Welfare

47. The DWG recommends that the Scottish Government should ensure that a fuller contemporary interpretation of the welfare of wild deer becomes a more important factor in determining standards of deer management in Scotland than is currently the case (*paragraph 22*).

What the DWG has in mind in respect of a contemporary interpretation of the welfare of wild deer is not clear. ADMG states with conviction that deer welfare is regarded by all professional deer managers as a priority consideration.

48. The DWG recommends that Scottish Natural Heritage should be developing a fuller interpretation of the welfare of wild deer that is based on a wider consideration of their biological performance (*paragraph 32*). See 48 above.

49. The DWG recommends that the Scottish Government should make clear that the ongoing levels of annual winter mortality amongst red deer on open hill range in the Highlands are unacceptable and need to be reduced (*paragraph 59*).

ADMG wishes to quote the remarks here of our Scientific adviser, a senior staff member at JHI: “*This section seems to have been written by someone without any idea about animal population dynamics. The fate of every wild animal is to die, and this will always peak when resources are in short supply and it is the very young and the old that make up most of this mortality. Animals die every winter because (a) they are not immortal and (b) because breeding condition is driven by summer grass growth. As Scotland is strongly seasonal in terms of vegetation growth, then herbivores will always die in the winter when resources are minimal and weather is poor*”. Analysis of the annual mortality figures over 9 years in the DWG report (table 40) indicates a rate of 1.4%. Accepting that this is likely to be a low estimate due to undiscovered carcasses, even at twice that figure this rate of mortality in a wild species compares favourably with the mortalities of farmed hill sheep kept in the same open range environment. According to the Farm Management Handbook the average mortality rate of Blackface breeding ewes is 10%. It is quite incorrect to suggest that this level of natural mortality of open hill red deer is excessive or an indication of poor management or of insufficient levels of culling. Figure 41 also show significant losses of sika deer, a relatively robust woodland species with the benefit of access to better feeding and shelter. It should also be noted that the winter conditions in 2017/18 were exceptional and the losses exceptionally high due to the “beast from the east”.

50. The DWG recommends that Scottish Natural Heritage should consider developing the use of the average carcass weights of yearlings in the autumn as an indicator of the welfare of the local population of the deer species involved (*paragraph 71*).

Carcass condition is primarily determined by weather and shelter factors. An index of carcass condition of a particular juvenile cohort, of which relatively few are culled, may reflect weather factors over preceding months but is no indication of management quality as pre-emptive action is not possible. Carcass condition is a matter of regular discussion at DMG meetings.

#### Section 19 Other Public Interests

51. The DWG recommends that Scottish Natural Heritage should be implementing a strategic approach to limiting ongoing dispersal by deer into both peri-urban areas from the wider countryside and urban areas from peri-urban areas, selecting target areas on a prioritised basis (*paragraph 26*). **This is largely beyond remit of ADMG.**
52. The DWG recommends that the Scottish Government should ensure that increasing attention is focused on implementing effective deer management in peri-urban and urban areas to limit damage to public interests, and that Scottish Natural Heritage adopts a more focused approach towards achieving this (*paragraph 39*). **See 51 above.**

#### Section 20 Economics of Wild Deer

53. The DWG recommends that the Scottish Government should keep a clearer account of the expenditure by the public sector each year on the management of wild deer, and also ensure that it develops improved information on the estimated annual costs of damage by wild deer (*paragraph 22*).

**As is prevalent throughout this report the standpoint of the DWG appears to focus on the public sector costs, the case against deer, without adequate reference to their contribution, their value to Scotland. We would support this recommendation with the proviso that positive economic impact data is also collated.**

54. The DWG recommends that amendments to the ratings legislation in the 1975 and 1994 Local Government (Scotland) Acts should remove references to ‘deer forests’ in the phrase ‘shootings and deer forests’, and that section 6(8za) of the Valuation and Rating (Scotland) Act 1956 should be repealed (*paragraph 58*).



In the interests of clarity and consistency ADMG would not oppose this proposal despite having promoted the 6(8za) amendment.

## Part Four - Compulsory Powers

### Section 21 Information – Cull Returns

55. The DWG recommends that Scottish Natural Heritage should be planning to move its cull return system entirely online as soon as practically possible (*paragraph 29*).

Agreed. It is noted in the report that the level of reporting of the red deer cull is high although also noted that more prompt submission is appropriate. An online cull return system is likely to be helpful in this regard. However, it should be noted that cull data is of most value at local and DMG level where it informs population modelling and future cull planning. At national level cull figures may be of interest but, as the report repeatedly emphasises, it is impacts rather than numbers and densities that are important.

56. The DWG recommends that Scottish Natural Heritage should provide the option for land owners and occupiers completing cull returns to report whether they have experienced damage by deer in the year being reported and the nature of that damage (*paragraph 35*). **No objection.**
57. The DWG recommends that section 40 of the Deer (Scotland) Act 1996 should be amended to enable secondary legislation to be used to add to the types of information that can be required on a statutory basis under the section (*paragraph 40*). **Agreed.**
58. The DWG recommends that Scottish Natural Heritage should, as an essential step, start to increase substantially the extent of Scotland covered by the cull return system, taking a targeted and prioritised approach to the areas where the coverage is to be increased (*paragraph 64*). **Agreed.**
59. The DWG recommends that Scottish Natural Heritage should replace its current online deer database with a new system and establish a publicly accessible National Cull Database (*paragraph 59*).

Generally, DMG culls are shown in DMP population models. A number of our members have expressed concern that, if culls are publicly available in respect of individual landholdings this could attract unwelcome attention from animal rights activists. The preference would therefore be to publish culls at DMG or area scale rather than landholding level.

### Section 22 Information – Other Powers

60. The DWG recommends that section 40A of the Deer (Scotland) Act 1996 should be amended to refer to 'taken or killed' and to enable the information required to cover a period not exceeding five years (*paragraph 5*).

The DWG proposes that a cull return should include a target 5 years ahead. Whereas returning cull figures up to 5 years previous is a matter of submitting factual data, forward information is of a different value in being no more than a prediction assuming circumstances which may not come about. DMGs already forecast culls within their population models. These are available for comment at any time by SNH and can be seen in the Deer Management Plans on DMG websites. They are also reviewed annually in light of events and circumstantial change – "adaptive management".

We therefore question the value and purpose of including predictions and achieved culls in the same form and timescale. Furthermore, for red deer, modelling and cull planning at DMG scale, rather than per landholding, provides for building in allowances for the differing management objectives and cull plans of neighbours.

61. The DWG recommends that the Deer (Scotland) Act 1996 should be amended to remove the reference to the Code of Practice on Deer Management in section 6A(1) of the Act (*paragraph 19*). **As a technical adjustment for consistency we have no objection.**
62. The DWG recommends that section 6A(5) of the Deer (Scotland) Act 1996 should be amended to change the period within which a Deer Management Plan is to be submitted to Scottish Natural Heritage, so that the period is not less than three months and not more than 12 months as Scottish Natural Heritage may determine, according to circumstances (*paragraph 25*).
- As the proviso enables SNH to set the period according to circumstance, ie period at SNH's reasonable discretion, we would favour a maximum period of 24 months.**
63. The DWG recommends that section 15(3)(b) of the Deer (Scotland) Act 1996 should be amended to include sections 10 and 11 of the Act, rather than just sections 7 and 8 (*paragraph 39*). **Agreed.**
64. The DWG recommends that the period of notice required to enter land under section 15(2) of the Deer (Scotland) Act 1996, should be reviewed with the intention of making the period of notice shorter (*paragraph 41*). **No objection to this being reviewed.**
65. The DWG recommends that section 15(3) of the Deer (Scotland) Act 1996 should be amended to include as a purpose for entering on land, carrying out an assessment of the impacts of deer in any area in pursuance of Scottish Natural Heritage's functions under section 1(1) of the Act (*paragraph 47*). **Agreed.**

#### Section 23 Emergency Control Measures

66. The DWG recommends that section 10(1) of the Deer (Scotland) Act 1996 Act should be amended to include damage, directly or indirectly, to the natural heritage and that section 11 of the Act should be repealed (*paragraph 31*). **Agreed.**
67. The DWG recommends that section 10(1)(b) of the Deer (Scotland) Act 1996 should be repealed (*paragraph 36*). **Agreed.**
68. The DWG recommends that the Scottish Government should amend Section 10 of the Deer (Scotland) Act 1996, so that the owners of land where Scottish Natural Heritage implements measures under section 10(4) have a liability for any net cost involved in carrying out the measures, subject to scope for Scottish Natural Heritage to waive any net cost in appropriate circumstances (*paragraph 45*).

**We have concerns about this proposal which would effectively convert S10 from an emergency measure to a fast track S8. Both measures have specific and different purposes in current legislation. If S10 were to be changed, the right of the party concerned to be protected against State action without consultation and agreement would require the protection of an appeal procedure. Despite the view that some of the existing powers are unworkable ADMG considers that they are both desirable and adequate.**

69. The DWG recommends that the title of section 10 of the Deer (Scotland) Act 1996 should be replaced with 'Control Actions' or a title similar to that and that the section should be amended to cover public interests of a social, economic or environmental nature (*paragraph 55*).

**We are not convinced that this is a meaningful alteration. S10 is a short notice emergency power and is adequately described as such in existing legislation.**

#### Section 24 Control Schemes

70. The DWG recommends that the Deer (Scotland) Act 1996 should be amended to remove references to the Code of Practice on deer management from section 7(1) and (3) and from section 8(1) (*paragraph 27*). **Agreed.**

71. The DWG recommends that the Deer (Scotland) Act 1996 should be amended to repeal section 8(2) and that, as a consequence, s.7(2) should also be repealed (*paragraph 38*).

We cannot support such a proposal which, as we understand it, converts S8 to a mechanism for forcing “enhancement” - habitat change, rather than as a statutory remedy for addressing “damage”. Enhancement, eg by woodland regeneration or creation, is a matter for negotiation and, where appropriate, incentivisation, rather than compulsion with financial penalties for non-compliance.

72. The DWG recommends that the Deer (Scotland) Act 1996 should be amended to re-instate section 8(5), which was repealed in 2011 (*paragraph 44*). **No objection.**

73. The DWG recommends that paragraph 13(2) of Schedule 2 of the Deer (Scotland) Act 1996 should be amended, so that the grounds for appeal are that a control scheme is not within the powers of the Act or that any of the requirements of the Act has not been complied with (*paragraph 54*).

ADMG cannot agree that the right of appeal should be reduced to procedural grounds only. Appeal on substantive grounds should also be maintained. Evidence used for regulatory action by SNH must in fairness stand to be tested.

74. The DWG recommends that paragraph 13(4) of Schedule 2 of the Deer (Scotland) Act 1996 should be amended, so that the options for the Land Court are to confirm the scheme or direct Scottish Ministers to revoke it or part of it in so much as it affects the applicant (*paragraph 55*). **Agreed.**

75. The DWG recommends that the Environment, Climate Change and Land Reform Committee of the Scottish Parliament should consider holding a short inquiry into the use of section 7 Control Agreements under the Deer (Scotland) Act 1996 in the Caenlochan area (*paragraph 68*).

We understand that DWG had no contact with the DMG, South Grampian DMG. We also understand that the DMG, working closely with SNH, is engaged in effective coordinated action, as is agreed to be necessary, meeting agreed reduction cull targets in seasons 17/18, 18/19, and probably 19/20. The present S7 Agreement will expire in June 2020 and it is planned that ongoing management will be framed within a new widely focused DMG deer management plan. That being so the value of a backward-looking review of the history of the S7 Agreement is questionable.

76. The DWG recommends that Scottish Natural Heritage should ensure that it sets out any section 7 Control Agreements in terms that can be readily converted into a section 8 Control Scheme under the Deer (Scotland) Act 1996, and that Scottish Natural Heritage should also ensure that it already has the evidence to enforce a section 8 Control Scheme if Scottish Natural Heritage is entering into any new section 7 agreements (*paragraph 79*).

ADMG disagrees with the discussion between Section 24, paras 72 and 78. If there is reluctance to enter into a S7 Agreement, as apparently stated by SNH in correspondence to DWG, we attribute this not to concern that the S7 Agreement could be progressed to a S8 Scheme, which has long been the case, but to the development of Deer Management Plans (DMP) which have now substantially succeeded Voluntary Control Agreements by setting out planned deer populations at full population scale over periods of up to five years. SNH are involved in all DMP discussions and have an opportunity to advise as to the adequacy or otherwise of population targets. The situation in Breadalbane is an example where a S7 Agreement has not been renewed, all necessary actions now being provided for in the DMG Deer Management Plan. ADMG agrees however that any proposed S7 should be based on a sound case and requisite evidence sufficient to carry through into a S8 if required.

## Part Five - Non-Statutory Arrangements

### Section 25 Scottish Government

77. The DWG recommends that the review of Wild Deer: A National Approach (WDNA) which is due in 2020, should be a major and thorough review of the WDNA approach and should result in a more focused and targeted outcome (*paragraph 38*).

We would support such a review of WDNA which we consider to have value in setting the Government policy context for deer management. However, we would wish that context to be wider and to address herbivore impacts as a whole, not just in relation to deer.

78. The DWG recommends that section 5B of the Deer (Scotland) Act should be amended to remove the requirement for compliance with the Code of Practice on Deer Management to be reviewed every three years (*paragraph 57*).

We agree with DWG that the 3 yearly Code review requirement is onerous and unnecessary. The 2019 SNH pre-review questionnaire and conclusions added little of value or relevance. ADMG accepts that periodic reviews of deer management are reasonable but sees no need to review compliance with the Code separately. We would favour deer management reviews not more frequently than five yearly.

79. The DWG recommends that the Scottish Government should instruct Scottish Natural Heritage to carry out a review of the contents of the current Code of Practice on Deer Management with the aim of producing a clearer and more effective version of the Code (*paragraph 63*).

We share DWG's view of the present Code and consider that it could usefully be updated and improved in consultation with the sector.

80. The DWG recommends that Scottish Natural Heritage should make a policy decision with the Scottish Government's support, to continue to manage the Wild Deer Best Practice project for at least the next five years (*paragraph 77*).

Strongly agreed. WDBP is highly regarded by the deer sector and it is pleasing that, after a lull, it has now been reactivated under a new independent Chair. SNH support and participation is essential.

### Section 26 Scottish Natural Heritage

81. The DWG recommends that Scottish Natural Heritage should ensure an appropriate level of distinction between Scottish Natural Heritage's responsibilities under the Deer (Scotland) Act 1996 and the Natural Heritage (Scotland) Act 1991 respectively (*paragraph 15*).

We take this point although some overlap is inevitable. Deer management is just one of the strands which contributes to our environment and an integrated approach, considering all relevant factors, is necessary in addressing any problems and policies. Consideration of grazing, browsing and trampling, for example, should take account of all herbivores present at any particular locality. It is pleasing to see this point about an integrated approach made strongly in the recent Moorland Forum publication "Valuing Scotland's Moorlands"

82. The DWG recommends that section 2 of the Deer (Scotland) Act 1996 should be amended to include provisions requiring, firstly, Scottish Natural Heritage to report annually to Scottish Ministers on the exercising of Scottish Natural Heritage's functions under the Act and secondly, Scottish Ministers to present a copy of Scottish Natural Heritage's report to the Scottish Parliament (*paragraph 20*). **No objection.**

83. The DWG recommends Scottish Ministers should no longer be responsible for appointing the members of a panel under section 4 of the Deer (Scotland) Act 1996 (*paragraph 33*). **Agreed.**

84. The DWG recommends that the sequence of assessments of Deer Management Groups carried out by Scottish Natural Heritage in 2014, 2016 and 2019 should come to an end and that Scottish Natural Heritage's focus should now be ensuring the standards of practical deer management implemented on the ground by land owners minimise the damaging impacts which deer can cause to public interests (*paragraph 69*).

ADMG considers that this proposal to abandon the Assessment approach requires further consideration and consultation. The Assessment process has been of real value in evidencing progress by the red deer sector, albeit, if used again, it would benefit from simplification and reorientation from process to outcomes. The DMGs have done all that has been asked by SNH with supporting investment from both the Scottish Government and ADMG (£40,000 into the 2018 DMG Health checks). The DMGs themselves have shouldered much increased costs in developing deer management plans and employing consultant support. It is well understood that the priorities have changed and that climate measures are now pre-eminent in importance. As it happens the DMGs occupy much of upland Scotland where most of the climate related improvements can and are already being made (eg peatland restoration and woodland expansion). The deer sector recognises its role and responsibility and is ready and willing.

## Part Six - Refocused Approach

### Section 27 Deer Authority

ADMG strongly refutes the characterisation of ADMG as "representing hunting interests". ADMG represents DMGs. DMGs are increasingly diverse in terms of their types of members and their management objectives. DMGs now bring together public body land managers (FLS, SNH), Community ownerships, NGO landowners, along with private owners whose objectives range from deer stalking to environmental transformation. It is the role of DMGs through deer management planning to manage deer populations which best meet the management requirements of all of those disparate interests. It is not therefore correct to state that ADMG represents only one of that range of interests.

85. The DWG recommends that Scottish Natural Heritage should avoid over-emphasising the need for formal collaborative groups for deer management and adopt a more flexible approach to supporting other forms of liaison and collaboration where these develop, including in open hill red deer range (*paragraph 25*).

ADMG strongly disagrees about the value of collaboration as characterised by DMGs. We fully accept that other forms of liaison and collaboration are valuable in other circumstances eg in the lowlands where roe deer, a territorial species, predominate. Red deer in the open range, as a herding free ranging species, can only be managed through cooperation between the land managers who share access to them both as a common resource and to deliver shared management objectives. We were amazed to note that DWG appears to place little value on DMGs which is in contrast to the SNH 2019 Review which notes considerable progress in the effectiveness of DMGs in delivering the public interest. DMGs are an established and effective delivery mechanism for much public policy for the uplands. Why discard an evolving approach which is working increasingly well? This is not the only point on which DWH and SNH reports are at odds!

86. The DWG recommends that Scottish Natural Heritage should adopt 10 red deer per square kilometre as an upper limit for acceptable densities of red deer over large areas of open range in the Highlands and review that figure from time to time in the light of developments in public policies, including climate change measures (*paragraph 37*).

ADMG finds this conclusion most surprising being at odds with the general thrust of the DWG recommendations that environmental impacts, not deer numbers or densities, should be the yardstick for "effective deer management". It also appears to overlook that the SNH Report finds that the current population of red deer averages 9.3 per sq. km., already lower than the DWG prescription.

Sustainable deer densities in any area will vary widely, reflecting the quality of the land, the availability of food and shelter, as well as other land uses sharing the same land area, eg sheep farming. It is not helpful to have an across-the-board maximum deer density. One size does not fit all when it comes to deer management!

87. The DWG recommends that Scottish Natural Heritage should very substantially reduce the extent to which Scottish Natural Heritage carries out direct counts of red deer on open hill range and refocus Scottish Natural Heritage's limited resources on building up more information on the impacts that deer are having on the natural heritage, woodlands, forestry, agriculture and other public interests in Scotland (*paragraph 43*).

Deer management, at least by the DMGs in the red deer/open range situation representing about 40% of the area of Scotland, is increasingly driven by population modelling and targets. Regular counting is the fundamental basis of this system and the SNH contribution of regular aerial counts has been invaluable in cross checking DMG ground counts and contributing to accurate modelling. We are opposed to abandonment of the SNH count programme. As a separate point, is it no longer to be regarded as valuable that DMGs are now a repository of much valuable data on deer populations, and habitat impacts?

88. The DWG endorses Scottish Natural Heritage's identification of the need for significant changes in deer management as an important issue in climate change mitigation measures and recommends that Scottish Natural Heritage treats this as a high priority (*paragraph 50*).

ADMG shares that endorsement and in our Autumn 2019 publication "Rising to the Challenge" have emphasised the role which deer managers are playing in contributing to the Scottish Government's climate policy initiatives, particularly in regard to woodland expansion and peatland restoration. We do not subscribe to the view that climate action is simply about further swingeing reductions in deer numbers.

89. The DWG recommends that Scottish Natural Heritage should allocate a significantly greater share of its resources as the deer authority under the Deer (Scotland) Act 1996, to the management of wild deer in Scotland outwith open hill red deer range (*paragraph 64*).

ADMG freely acknowledges that there has been excessive concentration by SNH and other bodies on the management of open range red deer, possibly to the detriment of other situations and other deer species, ie in the lowlands and near-urban areas. A rebalancing of priorities would be beneficial on the assumption that the increasing independence and effectiveness of the DMGs will continue and require less support from SNH.

90. The DWG recommends that Scottish Natural Heritage should be using suitably experienced staff based in Scottish Natural Heritage's seven Areas and acting for Scottish Natural Heritage's responsibilities under the Deer (Scotland) Act 1996, to develop a systematic account of deer management and deer impacts in all parts of Scotland where wild deer occur (*paragraph 74*).

ADMG would support a more dedicated allocation of resources to deer matters by SNH but cautions against an exclusive approach which leads to deer being considered in isolation, as has long been a problem.

91. The DWG recommends that Scottish Natural Heritage should, in fulfilling its responsibilities for deer management under the Deer (Scotland) Act 1996, be developing Local Authority areas as an important intermediate level between national and local levels (*paragraph 79*).

There may be a role for a regionalised tier of governance, albeit at more public cost. However, if it is envisaged that this should be on a local authority basis it must be noted that local authorities have little knowledge of deer matters and no resources to adequately build capacity. In the areas covered by DMGs local authority boundaries bear little relation to deer population areas. We consider that the options for a more localised approach require further consideration, but we note current thinking on regionalising land management matters on a broader basis.

92. The DWG recommends that the Scottish Government should, in making its annual budget allocation to Scottish Natural Heritage, distinguish between the budget allocated to Scottish Natural Heritage for its functions under the Deer (Scotland) Act 1996 and the budget allocated for Scottish Natural Heritage's functions under the Natural Heritage (Scotland) Act 1991 (*paragraph 88*).

We have no particular comment to make on SNH budget allocation other than that the measures recommended by DWG are likely to increase public cost. The report appears to envisage a partial reconstruction of the arrangements under DCS with clear blue water between deer and all other SNH areas of responsibility. While agreeing that DCS brought much more focus and dedicated attention to deer matters we have reservations about any arrangement which leads to deer being treated in isolation which, on past experience, can lead to a loss of context and proportion.

#### Section 28 Regulatory System

93. The DWG recommends that Scottish Natural Heritage should start obtaining returns under both sections 40 and 40A of the Deer (Scotland) Act 1996, by combining the notices that are sent and providing space for each return on Scottish Natural Heritage's cull return form (*paragraph 15*). **Agreed.**
94. The DWG recommends that Scottish Natural Heritage should, as part of developing Local Authority areas as an intermediate level for considering deer management, appoint a Panel under section 4 of the Deer (Scotland) Act 1996 for each such area with a membership made up of public sector representatives (*paragraph 22*).

See our views on a Local Authority approach above (91). We would oppose the setting up of local panels made up of public sector representatives only without practitioner representation (28/21). There is a danger of creating a further tier of administration with little advantage and at additional cost.

95. The DWG recommends that section 4 of the Deer (Scotland) Act 1996 should be amended to allow a member of Scottish Natural Heritage staff to be a member of a Panel established under section 4, in order to represent Scottish Natural Heritage's natural heritage functions under the Natural Heritage (Scotland) Act 1991 (*paragraph 25*). **Note our reservations above (94) on the proposal to set up such panels.**
96. The DWG recommends that Scottish Natural Heritage should make more use than so far of its powers under sections 6A and 10 of the Deer (Scotland) Act 1996, where deer are causing or are likely to cause damage to public interests (*paragraph 37*).

ADMG accepts that SNH should use its statutory powers, as they presently stand, in circumstances where cooperation is not forthcoming. We would however point out, as DWG has also observed, that the ideal is that persuasion is successful before compulsion is required.

97. The DWG recommends that the Scottish Government develop proposals for a planned cull approval system that would work to best effect in Scotland and then amend the Deer (Scotland) Act 1996 to provide scope for such a system to be introduced by secondary legislation as and when required (*paragraph 88*).

ADMG has read and noted these undeveloped contingency proposals but also that DWG has concluded that the voluntary principle should pertain, at least until such time as it is shown to be insufficient. We would just point to the practical difficulties of statutory cull setting – at what level? Landholding level presumably. What are the criteria for requiring a different level of cull? What are the trigger habitat criteria? Who is going to monitor them? How are other land uses to be taken into account? How is deer and land management on neighbouring ground to be taken into account when the deer population is shared? Who decides and which public interests are affected? Are there rights of appeal? We would suggest that the wisdom of Solomon would be required and that this approach would remain a matter of negotiation rather than of absolute judgement.

#### Section 29 Conclusions

98. The DWG recommends that the Deer (Scotland) Act 1996 should, after amendments to implement recommendations in this Report, be replaced with a new Deer (Scotland) Act (*paragraph 16*).

As per previous comment there may be a case for bringing existing legislation together, addressing anomalies, and making some of the recommended improvements. The case for radical and substantive change has yet to be adequately made and should be matter for future judgement based on further progress.

99. The DWG recommends that the Scottish Government and Scottish Natural Heritage should develop and implement a programme of changes to the current system of deer management based on the Group's recommendations, so that Scotland will have a system that ensures effective deer management that safeguards public interests and promotes the sustainable management of wild deer (*paragraph 24*).

While recognising the public interest in “effective deer management that safeguards public interests and promotes the sustainable management of wild deer”, there needs to be recognition of the value of deer to Scotland.