

ADMG Response

Managing deer for climate and nature: Consultation

March 2024

Theme 1: Enhancing the Natural Environment

1. Do you agree that NatureScot should be able to intervene, through DMNROs, to ensure that action is taken to manage deer, where deer management has been identified as a key part of nature restoration?

- Yes
- No ✓
- Don't Know

Any substantial changes to legislation require the provision of clear evidence of the rationale for intervention, to outline different policy options, give clear outline of the impacts of the intervention, as well as some quantification of expected costs and benefits. ADMG believes that the case for additional powers falls short.

Rationale for Intervention: Achieving policy objectives

The Scottish Government states that in order to achieve its nature and climate policy objectives, it requires essential new deer management powers. The Government also states that this approach requires a shift in balance between public and private interests and that the new legislation will balance these interests in a proportionate manner. ADMG does not agree that this additional power is either proportionate or necessary, and implementation is unlikely to achieve the nature and climate policy aims that justify it.

With grant funding having already been available for 10 years and longer for climate related work, ADMG believes that there is a lack of recognition in the consultation as to why much of the work that would improve biodiversity has not been undertaken in the past. There are significant lessons to be learned and previous agricultural, forestry and other support schemes have been complicated, slow and prohibitive to biodiversity improvement. Significant progress has been prevented through existing barriers to change. The recent reductions in the budget for the Forestry Grant Scheme will prevent tree planting rather than encourage it, and streamlining of applications is required, not reductions in funding.

ADMG has repeatedly highlighted, that responsibility for the lack of uptake of grants and failure to meet targets rests with the Scottish Government; with poorly integrated agricultural policies, grant systems that prevent and deter applications and competitive restoration schemes which are oversubscribed, expensive to apply for and risky to access. There is a lack of joined up thinking across the silos in Government and a forestry grant system which is overly prescriptive and restrictive to implementing change.

23/3/24



ADMG firmly believes in the principle that those entrusted with stewardship of the land should not damage the environment and considers that regulation is already in place to safeguard this principle. ADMG accepts that the current legislation as relates to the Deer (Scotland) Act 1996 requires modernisation and has previously been supportive in principle of changes to the current regulatory mechanisms to ensure that they are fit for purpose and can be used in the appropriate circumstances. We assert that the need for robust evidence will always be a necessary factor in progressing regulatory action which provides a 'safe-ground' principle where landowners understand the regulatory parameters within which they are expected to operate.

ADMG considers that the proposals for a new Deer Management Nature Restoration Order (DMNRO) fall well outside the scope of the previous legislation. Described as "proactive" legislation rather than reactive and in the absence of any detail about how, where and on what scale they would be used, ADMG has significant concern that the proposed orders would in effect replace incentives and the principle of public goods for public money, with a blunt legislative tool to deliver the public interest instead.

This clearly goes against policy principles of using the right combination of levers (incentives and regulation) to deliver public interest as was proposed through the creation of the Strategic Deer Board, instead creating a system of heavy-handed regulation not just through further additional Section 10 powers to prevent damage (Theme 2) but through the implementation of regulation triggered by a need for enhancement forcing landowners to carry out certain land management objectives whether they like it or not (deer culling, deer fencing) and apparently at their own cost without consideration of the impact on their businesses and associated employment.

It is stated that *"the proposals in this theme seek to address deficiencies in the existing deer legislation"*. ADMG have seen little evidence or rationale from the Scottish Government as to why existing regulatory powers are deemed to be insufficient nor an explanation of why these cannot be strengthened to become more effective without the additional, and in ADMGs view, disproportionate step of the need for DMNROs.

Furthermore, under the current proposals for DMNROs, to consider that deer management alone and in isolation will be enough to deliver both the scale and complexity required for Climate and Nature risks policy failure. Ecological restoration and enhancement are complex, require an understanding of all factors that have resulted in past ecological changes, and may require multiple management actions across many sectors to deliver successful outcomes. Therefore, integrated incentives for complementary activities (peatland restoration, tree planting, INNS removal, sustainable livestock grazing) must be properly resourced and easily accessible to those choosing to undertake them. We have also been clear in our discussions with the Scottish Government and its Agencies, that incentives must be put in place for the deer management component contributing to enhancement and have submitted a joint proposal with Scottish Environment Link and Scottish Venison for a venison subsidy as a simple and cost-effective means to incentivise deer management at a higher level of cull.

ADMG welcomes the statement that "The Scottish Government plans to put in place a financial scheme or schemes for deer management, alongside existing support for forestry and peatland restoration" but is disappointed that as yet, details of any such scheme or schemes remain elusive despite 3 years of discussion. This currently disincentivises deer managers who currently operate at a loss. ADMG finds it very difficult to comment constructively, as it would wish, in absence of the incentive part of the package, in other words a balanced proposal of incentives and penalties, despite assurances that these are under consideration but are complex due to overlap with other new rural support systems which have yet to be made known in detail.

Policy Options

ADMG fully supports the policy of enhancement and restoration and have been actively encouraging landowners to mitigate against biodiversity loss and to help contribute to net zero targets by enhancing their land through peatland restoration, tree planting and woodland restoration through the deer management planning process since 2014 – all of which has been happening in a voluntary process through deer management plans covering 3m ha of the uplands.

During this time deer numbers have reduced¹ across the upland open red deer range, largely through privately funded management. Meanwhile Scottish Government continues to incentivise minimum stocking densities for sheep in the uplands.

Collaborative mechanisms through deer management groups and other landscape scale initiatives are already in place and would benefit from strengthened support and access to funding rather than simply increasing the threat of regulatory action which will impact on only one element of a range of key factors affecting biodiversity loss. The Scottish Government should seek to provide more effective support to the collaborative landscape structures that exist rather than seeking to regulate further on a single species issue – when clearly, according to the State of Nature report, multiple management actions may be required to restore or enhance key habitats over a realistic range of timescales to tackle the key drivers of biodiversity loss.

Impacts of Intervention

Throughout the consultation document, the concepts of ‘restoration’ and ‘enhancement’ are used interchangeably. These are different ecological processes – the former suggests restoring a habitat to a subjective point in past history and in the other making a subjective judgement on how to improve an existing habitat. In principle, ADMG fully supports these concepts and has encouraged landowners to consider the range of ecological opportunities available to them. However, the concept that Government can legislate for either of these outcomes is flawed and would seem to be unworkable in a regulatory context given that the powers to restore damaged land through Restoration Orders and Land Management Agreements and Orders already exist through the Nature Conservation (Scotland) Act 2004 but are rarely used.

Under the DMNROs, NatureScot would prescribe the deer management actions but without additional, complementary management actions being undertaken by the landowners – this is unlikely to achieve the nature and climate policy outcomes required. Deer reductions alone in many geographical areas are unlikely to achieve the outcomes desired if a habitat is ‘stuck’ and cannot respond naturally without further intervention. If a DMNRO is implemented which enforces a deer reduction but does not achieve the outcomes – what happens? Could a landowner expect compensation for the costs incurred? How long will owners be under an DMNRO? If the aim is to enable tree planting without fencing using deer control alone, where does the burden of risk lie? Despite proposed amendments to the Close Seasons – female deer should still be given protection

¹ Albon, S.D., McLeod, J., Potts, J., Irvine, J., Fraser, D. & Newey, S. 2019. Updating the estimates of national trends and regional differences in red deer densities on open-hill ground in Scotland. Scottish Natural Heritage Research Report No. 1149.



during summer months to safeguard welfare and pose a risk to newly planted trees. Furthermore, other herbivores such as sheep, cattle or hares, may also be present and can cause damage to young trees but currently would seem to be outside the scope of the Order.

Costs (Risks) & Benefits

It is the role of the Government to find the correct balance between regulation and incentives. However, not only are our members key stakeholders in the delivery of many of the actions required for climate and nature, but our members would also seem to be the most exposed to the legislative changes being proposed in this consultation.

There is real concern that the greater threat of regulatory action, both through DMNROs and revisions to current Section 10 provisions, disincentivise future voluntary cooperation in deer management impacting further on nature losses. In the foreword to this consultation Lorna Slater MSP rightly states that private deer managers deliver 80% of deer management in Scotland. At this stage, there is no confidence that the introduction of DMNROs will have any impact on the meeting of nature and climate targets, but it may have the undesired effect of damaging the current good working relationship between deer managers and the NatureScot deer officers in the highlands.

What will be critical to the Scottish Government's ability to meet biodiversity and carbon targets will be the continuation of positive management actions undertaken by ADMG members. Our members are critical delivery partners in the Scottish Government's strategy and ADMG would encourage the Scottish Government and its Agencies to develop an integrated approach across all policy areas which enable and empower our members to continue to deliver Nature Positive outcomes, providing adequate and effective support whilst limiting unnecessary bureaucracy and legislative burdens. The proposals in this consultation do not do this.

Support for those currently employed in deer management has been significantly lacking with many feeling that their livelihoods are threatened by much of the work proposed in this document, including significant deer reductions. ADMG believes that not enough work has been undertaken by the Scottish Government to better understand the views of deer managers who hear about a 'just transition' but feel that their concerns are not being taken seriously enough which has been a prevailing theme among those from the Common Ground Forum. The Scottish Government must demonstrate what Just Transition means in practice, in supporting fragile rural economies to adapt; not only securing jobs in deer management, but ensuring that deer managers have the skills, training and support to provide effective deer management in the future.

ADMG Recommendations

- Improve existing legislation.
 - Drop the proposed introduction of DMNROs.
 - Ensure adequate incentives to deliver ALL management activities required for restoration/enhancement.
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2. Do you agree with our proposed criteria for a DMNRO?

They can only be ordered where there is social, economic or environmental benefits to be achieved through nature restoration, and additional deer management is a key factor or one of the key factors in securing that benefit?

- Yes
- **No** ✓
- Don't Know
- I don't agree with DMNROs

ADMG does not agree with the principle that restoration or enhancement should be used as a trigger for regulatory intervention. It is our strong view that proposals for a new DMNRO fall well out with the scope of the previous legislation. Described as “proactive” legislation rather than reactive, without clarity to the contrary, there is a perceived risk that proposed Orders would in effect replace incentives and the principles of public goods for public money – with the principle of legislating to deliver the public interest instead. This approach is not used in any other sector within the rural economy. In any other sector change would be based on grant supported voluntary management agreements.

Where Government policy supports peatland restoration or woodland expansion, these activities are incentivised by provision of targeted grants. If farmers are to be encouraged to provide space for Nature such as conservation headlands AECS payments are available to them. A DMNRO would seem to provide for forced land management change at the discretion of NatureScot without incentive (so far as is currently made known) or right of compensation.

ADMG does not believe the heavy weighting towards regulation using the triggers of enhancement is a progressive step. This clearly goes against the principles of using the right combination of levers (incentives and regulation) to deliver public interest – to a system of heavy-handed regulation not just through additional Section 10 powers to prevent damage but to regulate landowners to carry out certain land management objectives whether they like it or not (deer culling, deer fencing). In order to be effective ADMG would recommend that the Scottish Government finds the correct balance between regulation and incentives. This seems a perverse way in which to motivate those who are in a position to deliver the required change.

It is not clear what criteria or threshold will be used to determine what property or group of properties will be served with a DMNRO. Furthermore, the stated lack of a need for an Agency to carry out an ecological baseline does not make practical sense as an assessment will still be required as to the extent to which deer may be suppressing a restoration or enhancement project - i.e. the concept of “damage” is still relevant and would still need to be determined. We are constantly advised by NatureScot that management action should be evidence based but the need for evidence is skated over in these proposals. The need for robust evidence will always be a necessary factor in progressing regulatory action and provide a framework where landowners understand the regulatory parameters within which they are expected to operate. There will also be no measure of success without regular monitoring of habitat for which a baseline is required.

It would have been helpful if the consultation had provided greater clarity on how the DMNRO would be used and under what specific circumstances. Supporting information states that:

“Unlike the existing section 7 or 8 powers under the 1996 Act, use of the DMNRO would not require deer damage to be assessed against a baseline. The primary criterion for a DMNRO would be where NatureScot assessed that there are social, economic or environmental benefits to be achieved through nature restoration over a specified area and that deer management will be a key factor or one of the key factors in securing those benefits.”

It may be the case that deer management is a key factor, but given the complexity involved in ecological restoration, in most situations, it is unlikely that deer management alone will be enough to deliver the perceived benefits - *“Nature restoration in this context would encompass objectives including tree planting, encouraging natural regeneration, peatland restoration, water management, natural capital enhancement”*. The list of possible reasons is so extensive and vague as to be meaningless, for example Natural Capital enhancements covers everything from soil, air, water, habitats, timber and food production etc. Without specific mention of designated sites it can only be speculated that the ambition to achieve 30x30 and Nature Networks along with the 6 landscape scale projects, and the new national park – would be the main focus of the legislation but it is not clear. The lack of narrative around this makes it confusing and difficult to see under what circumstances the orders could be imposed. In relation to current designated sites, we know that the remaining $\pm 20\%$ that remain in Unfavourable Condition are so because they are complex sites and require multiple actions to be addressed, over and above simply reducing deer numbers.

3. If you answered no to the previous question, what criteria, if any, would you recommend?

- There should be no criteria/restrictions
- There should be more criteria/restrictions
- **I don't agree with DMNROs ✓**
- Don't know

Please provide reasons for your answer here

ADMG does not agree with the principle that restoration or enhancement should be used as a trigger for regulatory intervention.

4. Do you agree that NatureScot should be able to require a person who is subject of a DMNRO to undertake a range of actions to achieve deer management objectives in these circumstances?

- Yes
- **No ✓**
- Don't know

ADMG does not agree with the principle that restoration or enhancement should be used as a trigger for regulatory intervention.

“Failure to complete a required action under a DMNRO could lead to direct intervention by NatureScot or those they authorise to complete specified tasks with recourse to cost recovery from landowners. The list of possible actions includes:

- *Reductions in deer numbers.*
- *Fencing.*
- *Specified additional work to support deer management including habitat assessments, more detailed cull plans, and cull reporting”.*

The Deer Working Group (p272) states that *“the Group considers that trying to compel one or more landowners or occupiers to incur the expense of erecting and maintaining a deer fence as part of a s.8 Control Scheme, would be fraught with difficulties and problems”.*

The proposals state that there may be provision to regulate an owner to carry out detailed HIA or a deer count without any clarity on how this would be resourced. It is unclear if any actions determined by a DMNRO, would be financially supported – the use of the wording in the consultation proposal *“could qualify for support”* and *“in some circumstances”* does not instil confidence that public funding would be guaranteed or even available, or that any loss of jobs or any devaluation of the land through a material change in land use would be compensated for.

Under the Nature Conservation Act 2004, there is already provision for enhancement supported by a requirement that management actions are fully costed and will be provided to the landowners. Under the new DMNRO, there is no such provision.

The supporting information states that *“We are proposing a new Deer Management Nature Restoration Order (DMNRO) which will facilitate deer management for the purposes of nature restoration”.* ADMG would strongly argue that the imposition of an order is unlikely to be viewed as either enabling or facilitatory by those impacted by such an order.

Similarly, that deer management action to achieve enhancement (a subjective concept) would be *“prescribed by NatureScot under a single legally enforceable direction”* suggests that landowners would have no choice in determining the future land use objectives for their own property. The statement further appears at odds with the aspiration that NatureScot will *“work with”* landowners to implement NROs.

When considered in conjunction with Recommendation 3 in the Deer Working Group Report (which was accepted by Scottish Government) to remove the current statutory duty on NatureScot, in exercising its deer functions, to take into account the interests of owners and occupiers of the land - this casts further doubt that landowners concerns or objections would be taken into account. This also shows a complete disregard for any form of ‘just transition’ for deer managers and may undermine legitimate rural businesses. This particular recommendation is not being consulted upon; therefore the expectation is that this will be included in the new draft Bill and as such further supports the overarching trend in policy direction which is a significant shift in balance between public and private interests. The consultation states that the new legislation will balance these interests *“in a proportionate manner”* however, ADMG can see no evidence to support this statement and it is clear that our members would seem to be most exposed to and at risk from the suite of legislative changes being proposed in this consultation.

There is also concern over timescales. Nature restoration or enhancement in some cases could take decades, significantly out with the current funding windows which are normally a maximum of 5 years.

The introduction of DMNROs will, unless carefully handled, threaten the close working relationship that our members currently have with NatureScot employees and has the potential to create divisive

tension within currently effective DMGs. The subjective nature of decision-making processes leading to the imposition of DMNROs as outlined in this document may set back the considerable work that has already been undertaken by Deer Management Groups in collaboration with NatureScot. Progress made since the millennium and commended in the SNH 2019 report will be set back by implementation of these proposals. ADMG recognises the challenges which we face and supports Scottish Government policy objectives but would emphasise the importance of hearts and minds and voluntary collaboration. We strongly disagree with the sharp change to an approach which relies on threats and penalties without balancing incentives. We do not believe that these proposals will stand up to a rigorous cost benefit analysis.

5. Do you agree that non-compliance with DMNROs should be treated in the same way as non-compliance with existing control schemes

- Yes
- **No** ✓
- Don't know

ADMG supports the last resort use of existing control schemes (Section 8) where required action has not been forthcoming voluntarily (Section 7) and accepts that clarity as to the effectiveness of compulsory action is necessary. We are very willing to consider proposals for improvements to S8 procedures.

However, in the case of DMNROs, it is concerning that there is no mention of an interim step of, for example, a Deer Management Nature Restoration 'Agreement', as a precursor for regulatory action, as with current Section 7 Agreements which progress to Section 8 Control Orders and with Land Management Agreements under the Nature Conservation (Scotland) Act 2004 which may progress to Land Management Orders.

The main role of Scotland's deer legislation has always been to prevent damage or further damage to public interests. Current control schemes are based on the interpretation of damage which has been described as a "change in state that is regarded as detrimental to legitimate objectives" – (DWG Report P145).

Currently provision of robust evidence of damage by NatureScot is required in order to support any progression to a control schemes. The consultation implies that use of the DMNRO would not require deer damage to be assessed against a baseline and that the primary criterion for a DMNRO would be where NatureScot assessed that there are social, economic or environmental benefits. Determination of those benefits are wholly subjective as they relate to a perceived future outcome which can neither be measured nor guaranteed.

NOT INCLUDED ONLINE BUT CONTAINED ON PDF DOCUMENT ON SCOTTISH GOVERNMENT WEBSITE
Do you agree that if financial incentives for deer management are created, individuals subject to DMNROs should be automatically eligible for such support?

- Yes ✓
- No
- Don't know

Financial incentives will be vital to any such scheme- however we have significant reservations about DMNROs.

6. Do you agree that NatureScot should be able to recover costs from the landowner where they are required to intervene as a result of non-compliance with DMNROs?

- Yes
- No ✓
- Don't know

ADMG does not agree that the introduction of DMNROs based on the principle of restoration or enhancement should be used as triggers for regulatory intervention nor that non-compliance should result in severe financial penalties. Enhancement should be treated as a public benefit and as such, should be achieved through appropriately implemented management incentives.

7. If you do not support cost recovery, what alternative non-compliance measures, if any, would you recommend?

ADMG does not agree with the principle that restoration or enhancement should be used as triggers for regulatory intervention nor that non-compliance should result in any penalties, financial or otherwise. Enhancement should be treated as a public benefit and as such, should be achieved through appropriately implemented management incentives.

Please provide any further comments on the questions in this section here

Theme 2: Compulsory Powers and Compliance

8. Do you agree with our proposals that would allow changes to the types of information which can be requested by NatureScot (under section 40 of the 1996 Act), to be made via secondary legislation?

- Yes
- No
- **Don't know** ✓

The collation and dissemination of good information and robust data is the key to delivering effective and sustainable deer management. Currently landowners and occupiers are required to provide information on culls undertaken on their property and, in upland Scotland, a great deal of additional information is shared voluntarily with NatureScot via Deer Management Group meetings, Deer Management Plans and working plans.

The consultation does not suggest what type of additional information might be requested but should properties be expected to provide additional information such as, for example, Habitat Impact Assessment data or count information under a statutory requirement, this could place an unnecessary bureaucratic and financial burden on many estates. ADMG considers that, in order for this proposal to be considered, more information is required as to what additional information is envisaged.

The Deer Working Group Report demonstrated that there is a comprehensive level of cull data and count data in the highlands, but this data is fundamentally lacking out with the Deer Management Groups area. Greater emphasis should be given by NatureScot and Scottish Government in ensuring that data is gathered where it is currently lacking.

9. Do you agree with our proposals that the period of time over which NatureScot can ask for information on planned future culls should be increased from 12 months up to a period of 5 years?

- Yes
- No
- **Don't know** ✓

Deer Management Groups already provide cull plans on a landscape scale for five years in advance through their NatureScot verified population models. This covers 3 million hectares of the Highlands. Outside the deer management groups area where deer counting is not generally practicable greater emphasis should be placed on cull data in the first instance which is currently unknown but would provide a useful basis for calculating of populations, all species. We do not understand how NatureScot overall Scottish population estimates are arrived at in the acknowledged absence of necessary data.

Deer management requires to be adaptive in order to take into account a range of circumstances relating to management objectives, condition of deer, weather conditions, habitat condition, human

disturbance - all of which may vary considerably from year to year, and which will influence the deer manager's consideration of the annual cull to be taken.

It is not clear whether NatureScot would be required to 'approve' these culls and on what basis. Other than being able to gauge predicted national cull levels, it is difficult to see how this will be effective in practice when dealing with a highly mobile animal that may range across many landholdings. Similarly in a woodland context, without an understanding of what deer populations are likely to be, a proposed cull will be meaningless without the ability to determine whether the culls being reported will be sufficient and effective.

Although not a specific question, a proposed legislative change to allow NatureScot to set a timescale for submission of Deer Management Plans (DMPs) by land managers that is between 3 and 12 months may not be practical given that many specialist consultants are booked up months in advance and a three-month deadline may be unachievable.

10. Do you agree with our proposals that NatureScot should be able to use emergency powers under Section 10 of the Deer (Scotland) Act 1996, which include the ability to enter land to undertake short term deer management actions for a period of up to 28 days, to tackle damage to the natural heritage?

- Yes
- No
- **Don't know** ✓

Under Recommendation 69 in the Deer Working Group Report (accepted in principle by the Scottish Government), Section 10 would no longer be deemed as 'emergency powers' and would be considered a 'Control Action' so the question above is misleading.

ADMG agrees that NatureScot should have the ability to act quickly in relation to assessing damage and taking appropriate action where required, in emergency situations. However, ADMG has significant concerns around the cumulative scope and impact of proposed changes to Section 10 arrangements and whether these essentially would constitute a relatively easy way for NatureScot to bring about the equivalent regulatory impact of a Section 8 Control Order, for a range of circumstances broader than currently permitted, simply on the basis of evidence of damage (direct or indirect) without the necessary checks, balances and processes of appeal being in place.

The Deer Working Group recommendations summarised that the trigger for using an amended Section 10 for natural heritage purposes should not include a 'higher density' threshold but should be based on evidence of damage and that judgement would be required as to whether the damage is sufficient to warrant the use of these powers. It is not clear what the threshold to determine 'sufficient damage' would be in the context of whether to progress action under Section 7 & Section 8 or to jump straight to Section 10 - which could result in direct intervention on an owner's land.

11. Do you agree with our proposals that where NatureScot have intervened and carried out deer management actions as a result of these emergency powers, they should be able to recover reasonable costs?

- Yes
- No
- **Don't know** ✓

Under Recommendation 69 of the Deer Working Group Report, Section 10 would no longer be titled as 'Emergency powers' and would be termed a 'Control Action'. As discussed under Question 10, ADMG has significant concerns that the use of Section 10 to deal with damage would effectively replace the need for Section 7 and Section 8 and could enable NatureScot to take immediate regulatory action, at cost to the landowner, without duty to take into account the interests of owners and occupiers of the land (Recommendation 3 in the Deer Working Group Report, which was accepted by Scottish Government, recommended to remove the current statutory duty on NatureScot to take into account owners/occupiers interests).

If the use of Section 10 is considered to be necessary to prevent damage (directly or indirectly) to the public interest, it should be discretionary as to whether costs should be recoverable.

12. Please provide any further comments on the proposals set out in this section here.

On the basis of an assessment by NatureScot of direct or indirect damage to the natural heritage. operating under the amended Section 10 could negate the need for the lengthy and protracted processes of Section 7 and Section 8 and could enable NatureScot to escalate a control action almost immediately, with the costs falling to the landowner. It is questionable whether the reduced timescales involved would provide assurance to a landowner that evidence could be challenged, or action appealed.

DWG Recommendations 63 & 64: These powers would enable NatureScot to enter land for additional purposes relating to emergency measures and within a shorter period of notice than two weeks. In principle, ADMG agrees that being able to act quickly in an 'emergency' situation (e.g. for public safety or to protect native woodland) is important, but under Recommendation 69, this would enable Section 10 to be used in almost any situation where damage - even indirect damage - can be evidenced.

DWG Recommendation 66: ADMG agrees natural heritage be included at section 10 of the 1996 Act and would emphasise that any use of emergency powers must be based on whether there is evidence of sufficient damage to natural heritage. However, the inclusion of the wording "*indirectly*" to the nature of damage to the natural heritage is unclear and it is difficult to understand situations where evidence of "*indirect damage*" to the natural heritage could be sufficiently and robustly evidenced as to warrant the use of a control action.

DWG Recommendation 72: *The Deer (Scotland) Act 1996 should be amended to re-instate section 8(5), which was repealed in 2011.* This recommendation is intended to reinstate Section 8(5) of the 1996 Act which prevented a land manager from being compelled to erect a deer fence by a Section 8 control order. The Consultation document states that "*compelling a land manager to erect deer*

fencing may not be in line with modern deer management practice. We are minded to accept this recommendation but we do also recognise that there may be limited circumstances where the use of this power may be necessary and will consider appropriate alternatives”.

Indeed, under the section on DMNROs, the list of proposed actions that could be imposed on a landowner includes deer fencing. However, the Deer Working Group (p272) states that *“the Group considers that trying to compel one or more landowners or occupiers to incur the expense of erecting and maintaining a deer fence as part of a s.8 Control Scheme, would be fraught with difficulties and problems”.*

13. Do you agree with our proposals that everyone shooting deer in Scotland should meet fit and competent standards as evidenced by having achieved at least Deer Stalking Certificate Level 1?

- Yes ✓
- No
- Don't know

ADMG support this only on the proviso that novice deer managers are enabled to undertake deer management when accompanied by a deer manager with the appropriate competence level, and that guests or clients that pay to shoot deer are still able to do so with an appropriately competent guide.

ADMG would also propose that the standards include a mandatory Trained Hunter element to safeguard the venison industry.

Funding should be put in place to incentivise deer managers to achieve these qualifications. This will help ensure that there are suitably qualified deer managers that will be fundamental for deer management on the intended improved habitat created by Scottish Government policy.

14. Do you agree with our proposals to establish specified competence levels for those deer management activities which currently are only permissible under authorisation by NatureScot, such as night shooting, driving deer and out of season shooting?

- Yes ✓
- No
- Don't know

ADMG would propose that additional qualifications are recognised in evidencing an individual's competence and that a review of standards is undertaken to ensure that the relevant qualifications meet the standards of competency required and include the necessary assessment of the enhanced skills and knowledge required to undertake activities such as night shooting. Funding should be put in place to incentivise deer managers to achieve these qualifications.

ADMG would strongly support that female deer are afforded the highest level of protection during the close season and that out of season shooting (which would only cover females) be removed from these proposals. A separate authorisation from NatureScot should be required for any out of season shooting (to be granted only under exceptional circumstances).

It should also be pointed out that whilst the use of any 'sight of any type including light-intensifying, heat-sensitive or other special sighting device for night shooting' is now allowed under the Firearms Order (effective from 3 November 2023), under the new proposals this would still require a person to be "competent" in order to undertake the activity at night i.e. night shooting. ADMG would strongly support a review of the standards to ensure that the skills and knowledge required to safely use these types of scopes is also specifically included. There is an acknowledged risk to non-quarry animals and indeed potentially to humans and safeguards are required commensurate with that higher risk level.

15. Do you agree with our proposals that the requirement for an individual authorisation from NatureScot to carry out activities such as night shooting, driving deer and out of season shooting could be replaced by registration on the Fit & Competent Register where deer managers must have evidenced their competency to undertake specified activities?

- The Fit & Competent Register should replace individual authorisations for these activities
- **There should be a Fit & Competent Register as well as individual authorisations for these activities ✓**
- There should only be individual authorisations for these activities
- Don't know

Currently NatureScot holds limited information on the landholdings which control deer and statutory cull returns are requested only from properties currently on a limited database held by NatureScot. Where properties are controlling deer out of season or at night under Authorisation, NatureScot will have a record both of those properties (to ensure a cull return) and of the individuals carrying out this control (to ensure they are deemed Fit & Competent to carry out the activity). The anomaly to this has always been that NatureScot previously had no data on anyone operating under a General Authorisation to shoot deer out of season and in any case, the use of this authorisation has subsequently already been reduced with the removal of the close season for male deer.

If the current system of individual authorisations is replaced with just a register of those deemed Fit & Competent - ADMG is concerned that valuable information may be lost on where these activities are taking place and the numbers of deer culled under these specific activities. An individual registered on the Fit & Competent database could be undertaking these activities on multiple properties without NatureScot's knowledge and with no means by which NatureScot could request a cull return -unless those individuals are requested to provide information about the properties on which they shoot.

There is the risk that with reduced scrutiny on these, activities such as night shooting would essentially become unregulated and incidents of illegal poaching, particularly at night, could increase. This would be potentially prejudicial to deer welfare and food safety.

16. Do you agree with our proposals that use of a shotgun to kill deer should be subject to stricter regulation?

- **Use of a shotgun to shoot deer should require registration on the Fit & Competent Register** ✓
- Use of a shotgun to shoot deer should require registration on the Fit & Competent Register and an individual authorisation from NatureScot
- Use of a shotgun to shoot deer should require an individual authorisation from NatureScot
- Use of a shotgun to shoot deer should not be restricted at all.
- Don't know

The circumstances where the use of a shotgun might be deemed necessary are more likely to be associated with individual persons controlling deer in situations where a high-powered rifle is not safe for example those regularly called out to deal with injured deer that required to be dispatched (i.e a DVC) or those controlling deer, in areas of high public use or in built-up areas.

17. Do you agree with our proposals that any capture of live deer should be individually authorised by NatureScot?

- **Yes** ✓
- No
- Don't know.

If the intention is to capture live deer for the explicit purpose of culling them, for research or to retain them in a live state under livestock conditions, it is highly desirable that these activities be authorised. In the event of a capture for culling scenario, as this is most effectively done at night, this would require a night-shooting authorisation currently (but not necessarily under the proposals outlined in Question 15).

However, in the event of erecting a woodland enclosure where deer have inadvertently been fenced in - would an authorisation be required to deal with those animals? This could be detrimental to preventing damage to planted trees.

18. Do you agree that NatureScot should develop a statutory Code of Practice, which could provide guidance and minimum standards on topics such as animal welfare and disease prevention, on the live capture of deer in Scotland in collaboration with stakeholders for use in future?

- Yes
- No
- **Don't know** ✓

As per Question 17, the consultation lacks detail on specifically what live-capture scenarios this would relate to. Clearly activities such as specific capture-for-culling exercises would benefit from Codes of Practice.

Please provide any further comments on the proposals set out in this section here.

Theme 4: Changes to close seasons

19. Do you agree that the close season for female deer of all species should be the same?

- Yes
- **No** ✓
- Don't know

ADMG believes that the current provisions to set individual close seasons for females of different species through secondary legislation should be retained to enable the seasons to be amended according to changes in our knowledge and on account of new research findings.

Research on the impact of climate change and birth dates in deer shows a constantly adapting picture and it is likely that different species will adapt in different ways - therefore the ability to enable the regulations to adapt accordingly to safeguard deer welfare is essential.

20. Do you agree that the close season for female deer of all species should be changed to cover the period of highest welfare risk, from 31 March to 30 September?

- Yes
- **No** ✓
- Don't know

As per Q14, ADMG would insist that female deer are afforded the highest level of protection during the close season. ADMG would support that a separate authorisation from NatureScot be required for any out of season shooting (to be granted only under exceptional circumstances).

The current seasons for female deer are intended to prevent the orphaning of young calves and the shooting of female deer that are heavily pregnant. The General and Out of Season Authorisations currently do not allow the killing of female deer over 1 year old between 1st April and 31st August. The female close season therefore being proposed here is slightly longer than the one currently being used for authorisations.

It is important to separate what may be considered ethical arguments in setting dates (those that relate to scientific evidence and advice from welfare organisations) and those of a moral nature where decisions are taken at the discretion of the individual involved. The separate proposal that all individuals shooting deer would be registered as competent to do so and therefore be expected to have the necessary knowledge and understanding to be able to carry out an assessment of potential welfare risk on a case-by-case basis goes some way to mitigate welfare risks. It could be argued therefore, that it would remain the discretion of individuals whether to kill deer either earlier or later than currently permitted as part of routine management.

However, ADMG is concerned that with the heavier burden of regulation being proposed, an individual landowner, occupier or deer manager may be compelled or forced to shoot deer at a time they do not morally believe is right, or in certain cases, have contractors engaged by NatureScot to carry out this work against their will.

We currently see no evidence forthcoming from the Scottish Government that this should be changed or that young calves are not currently being orphaned or that it is in the public interest to cull heavily pregnant female deer. It should also be noted that the orphaning of calves may significantly impact their welfare even after the period of physical dependency is passed.

**21. QUESTION ONLINE – “Please provide any further comments on the questions here” –
QUESTION IN PDF: If you do not agree with our proposals to change the season for female deer,
what, if any, further actions would you recommend to support increased management of female
deer?**

ADMG would strongly support the use of incentives to encourage culls of female deer to be met in the appropriate season. Currently, the management of females is a cost operation to most landholdings and incentivised deer management would ensure support to fragile rural communities, support for a Just Transition where deer numbers are required to be reduced and would also incentivise carcasses entering into the food chain at optimum times of the year.

Theme 5: Venison

22. Do you agree that venison specific regulations should be repealed and venison should simply follow the same regulatory procedure as other wild meat and game products without the additional requirement of a Venison Dealers Licence?

- Yes
 - **No** ✓
 - Don't know
-

23. If no, do you agree that NatureScot should be able to gather more information from venison dealers on deer carcasses and their use?

- **Yes** ✓
 - No
 - Don't know
-

24. Please provide any further comments on the questions in this section here.

ADMG do not think the current system should be removed and nothing put in its place. Safeguards in the food chain are vital and there are scenarios where Food Business registration with the Local Authority is not required. The VDL (or equivalent) should catch these, albeit the system is not ideal. And there is considered to be inconsistency in how the role of local authorities is carried out.

ADMG acknowledges that the current system of requiring a Venison Dealers Licence (VDL) from a Local Authority has broken down and that it is not currently workable without additional resources being made available. The issue is that different Local Authorities use the current system as is evident from the mapping exercise undertaken by SAOS with differing levels of uptake/effectiveness.

However, for the purposes of safeguarding the venison sector, ADMG would like to see either the current system involving Local Authorities tightened to make it work, or for consideration to be given to collecting information from those either supplying cull returns to NatureScot and/or those registering on a NatureScot database to shoot deer, to also provide information on any purchases or receipts of wild venison which would then be held in a central location.

There is an important opportunity to replace existing arrangements with a new system that extends to all deer managers, including currently unregistered vocational stalkers. Potentially this would have the benefit of achieving a full, or near full, annual record of the national cull and thus a better understanding of deer presence and impacts across all of Scotland. It is understood that NS is working on the development of a digital app-based reporting system which may be able to fulfil this function. Such a system could be implemented through existing databases including the agricultural return system, which could be extended to forest holdings, and the Police Scotland database of firearms licence holders.

ADMG would also support Recommendation 20 in the Deer Working Group Report that Section 34 of the Deer (Scotland) Act 1996 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 described.

ADMG fully supports the rationale that existing food hygiene regulations, in combination with the proposed changes to the licensing of venison dealers ensures good levels of traceability. However, including additional powers to gather further information could further improve this and allow for a better understanding of the venison market. If it worked well and for example was digitally/app based it could access valuable information particularly in areas of low volume but it's important that that data was then used. This would require investment and development.

Theme 6: Kept and farmed deer

25. Do you agree with our proposals that the owner or occupier of land should be allowed to shoot stray farmed deer on that land in order to prevent damage by the deer, providing there is, by their assessment, no other reasonable or practical way to contain the deer?

- Yes
- No
- **Don't know** ✓

ADMG would support an approach similar to that taken by Forest and Land Scotland's policy on stray sheep - where all efforts should be made to notify the owner or the owner/occupier of the land on which they are going to shoot the stray farmed deer. There are not that many deer farms (~80) and most of them ear-tag animals as stipulation of sending them to slaughter. It should therefore be obvious that it isn't a wild deer and in many cases, it may be possible to re-capture the animal.

26. Do you agree with our proposals that anyone wishing to keep deer as private property (i.e. not for the purpose of farming or as an exhibit in a zoo) should require a licence to protect the welfare of those deer?

- Yes ✓
- No
- Don't know

ADMG agrees that if people are looking to keep deer in captivity as private property, they should be licensed, not only for the welfare of the deer themselves but the consequences of escape. For example, if someone was keeping muntjac in northern Scotland and they escaped we would want to know who was responsible given the impact they can have on biodiversity.

There are potential complications regarding 'ranching' which has no definition (but is effectively fenced open range, and also 'park' deer could fall into this category too, and no definition for that either). Where animals are taken for the purpose of keeping them enclosed (no matter how extensive that enclosure) ADMG generally takes the sensible position that an authorisation should be required for the purpose of keeping those deer.

It should be noted that the welfare of all protected animals is provided for under the Animal Health and Welfare Scotland (Act) 2006. The Act places a duty of care on pet owners and others responsible for animals to ensure that the welfare needs of their animals are met. The keeping of muntjac would not be included under this provision.

As to whether venison from deer kept as private property should be restricted from entering the human food chain, again - restrictions are already in place which require certain withdrawal periods for the use of veterinary drugs to be implemented.

This section is closely related to Question 17 on the taking of deer (ie for farming or ranching). It was proposed under this Question that the capture of live deer be authorised.

The range of circumstances under which deer would either be captured and/or kept as private property is broad and covers those say hand-rearing wild orphaned deer, deer inadvertently fenced into a woodland enclosure as well as the concept of 'ranching' which was an upland land use management objective previously being explored by Scottish Government.

27. If you do not support the introduction of licensing for kept deer, what further action, if any, would you recommend to protect their welfare?

Just to note that the welfare of all protected animals is provided for under the Animal Health and Welfare Scotland (Act) 2006. The act places a duty of care on pet owners and others responsible for animals to ensure that the welfare needs of their animals are met.

28. Do you agree with our proposals that anyone seeking to release captive red or roe deer into the wild in Scotland should require authorisation from NatureScot, for example, deer which may have been caught and monitored for research purposes?

- **Yes** ✓
- No
- Don't know

ADMG agrees that in order to reduce any biosecurity risk of returning or introducing an animal into a "wild" population, an authorisation should be required.

ADMG recognises the ethical and welfare concerns of taking and releasing wild deer, particularly stress of capture and translocation which is potentially more harmful than direct shooting or humane killing. However, just to note that there are numerous scenarios which could apply to this proposal ranging from release of rehabilitated wild deer in rescue centres, release of deer temporarily 'captured' within a fenced enclosure, through to the release of red deer into the wild herd to improve breeding genetics.

It is likely that any adult animals caught for the purposes of research would have been tranquilised and any subsequent release back into the wild (say after removing a GPS collar) would depend on restrictions or the withdrawal period for any drugs used and would have to address concerns about the risk of those animals entering into the human food chain. However, this is covered by existing Home Office legislation so there is no need to include this in any legislation.

29. If you do not agree with our proposals that anyone releasing red or roe deer should require authorisation, what, if any, further actions would you recommend to ensure they do not cause damage to habitats, or pose a risk to wild deer populations?

There is currently a clear distinction between farmed deer and wild deer. It is clear that farmed deer should not be released into the wild.

Please provide any further comments on the proposals set out in this section here.