

Consultation Response

Managing deer for
climate and nature

29 March 2024



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Rural Affairs and Environmental Law sub-committees welcome the opportunity to consider and respond to the Scottish Government's consultation: *Managing deer for climate and nature: consultation* (the "**Consultation**").¹ They have the following comments to put forward for consideration.

General Remarks

We have highlighted below areas where we consider additional information or further consideration would be welcomed in relation to the proposals. We have also provided specific comments where possible – although would note that we would have welcomed greater use of free text boxes to respond to some of the consultation questions, particularly where our comments are more general or are not reflective of the "Yes/No/Don't Know" options.

We would note that throughout the proposals, the main enforcement tools used are direct intervention and criminal offences. We would highlight that further consideration could be given to the suitability of other forms of sanction – noting the use of fixed and variable penalties, and enforcement undertakings, as means of ensuring a proportionate response to any breaches of the law across other areas of the statute book.

We would welcome more explicit consideration of the rights of appeal for those affected by the proposals, particularly in the context of the proposed intervention powers. We note a general lack of consistency across Environmental Law in relation to when and to whom appeals can be made against regulatory decisions, and would welcome this being clearly addressed in the proposals.

We also consider that there would be benefit in a consolidation of the various powers of entry under the existing and proposed laws, to ensure that there is a consistent approach and that all concerned can have a clear understanding of the extent of, and process for, exercising such powers.

¹ [Managing deer for climate and nature: consultation](#)

We note the discussion and proposals throughout the Consultation concerning the use of licences. We highlight the importance of considering how any such licences would align with or be consistent with other licensing schemes – and whether such schemes could be extended in these circumstances. Consideration and further detail would also be welcomed on aspects such as enforcement, including powers of entry and inspection, and how this aligns with other licensing powers exercised by NatureScot.

We note the ongoing and prospective legislative and policy reform within the wider agricultural, environmental, and land management legal landscape – including the Wildlife Management and Muirburn (Scotland) Bill, the Agriculture and Rural Communities (Scotland) Bill, and the Land Reform (Scotland) Bill. We highlight the importance of considering the interplay and overlap between such reforms to ensure a consistent and aligned approach across all policy developments affecting the rural sector and wider stakeholders. The range of the legislative changes in this area may provide an opportunity for consolidation and coordination where appropriate.

We more generally highlight the need for a robust evidence base, supported by clear policy objectives, underpinning the proposals.

We would have welcomed discussion and further information on the specific considerations in relation to the proposals concerning land in crofting tenure. There are a range of considerations in this context to ensure the proposals operate effectively, particularly in the context of common grazings. We would note the importance of the proposals adequately balancing the rights and interests of those affected.

We note the discussion in the Consultation on the use of deer fencing. We consider that additional information would be welcomed on the proposals, including on points relating to funding and those responsible for meeting the costs of this.

We consider that changes to the policy and legislative framework in this area would merit an appropriate awareness-raising campaign so as to make individuals and businesses aware of the revised requirements, and help support compliance. We consider that this is of particular importance in circumstances where multiple parties have an interest in the land, and there may be uncertainty over who is responsible for meeting the legal obligations.

Consultation Questions

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?

Please refer to our general remarks and comments at question 3.

2. Do you agree with our proposed criteria for a DMNRO?

Please refer to our general remarks and comments at question 3.

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

Don't know

We would welcome greater clarity on the scope and intent of DMNROs – for example on whether they are intended to be prescriptive in terms of the actions required to ensure compliance, or whether there will be flexibility for landowners to achieve this.

We generally highlight the need for consideration of other non-legal relevant factors, including detrimental impacts to social and economic metrics, and awareness of impacts on other species, both positive and negative. We would suggest that an assessment of economic and environmental impacts will need to be undertaken to establish a cost-benefit analysis and to identify unintended consequences.

As referred to above, we consider that greater information would be welcomed in this context in relation to the proposed sanctions, penalty powers, appeals, and consideration of the relevant criteria.

Questions 4-7

We have no comments to make.

Theme 2: Compulsory Powers and Compliance

Questions 8-10

Please refer to our comments at question 12.

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?

We have no comments to make.

12. Please provide any further comments on the proposals set out in this section [here](#).

We consider that the overall impact of various current initiatives on land managers must be assessed. We understand that considerable gathering of information and detailed forward planning will be required to meet new requirements on grouse shooting, muirburn, deer and potentially land management planning under the forthcoming Land Reform proposals, as well as adjusting to new agricultural support requirements. We note the potential cumulative compliance burden that this will impose on land managers. We would welcome consideration of how proposals could be integrated or aligned, e.g. through a single integrated management plan and return, to avoid fragmentation and duplication. This would also have the potential for simpler requirements for smaller land-holdings.

We note the proposals in relation to emergency measures. Further detail on the relevant thresholds and factors for assessing when there is an emergency would be welcomed. Additionally, we would welcome greater clarity on the provisions relating to notice for landowners, the mechanisms for appeal, and the conditions relating to the rights of entry. It is important that the proposals are proportionate and align with other relevant legal principles, such as landowners' property and privacy rights.

In respect of the proposals relating to the increased period of time over which NatureScot can ask for information on planned future culls, we would note a need to consider how a future change of use, ownership, or other factors could impact on this and that suitable flexibility is provided for in the legal framework.

We note the proposals for the introduction of secondary legislation, and highlight the importance of there being appropriate parliamentary scrutiny in relation to this.

Theme 3: Deer Welfare

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?

Please refer to our comments at question 19.

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?

We have no comments to make.

Questions 15-17

Please refer to our comments at question 19.

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?

We have no comments to make.

19. Please provide any further comments on the proposals set out in this section [here](#).

We would welcome greater information on who is proposed to have access to the Fit and Competent Register. We note the potential for significant issues over personal data and related concerns if the register is publicly accessible (although note that restricting access may constrain how it could be used in various contexts).

In respect of the proposals relating to training requirements, we note a general need to ensure there is the necessary capacity of training provider(s) and that these programmes are available to all in the industry.

We note the importance of ensuring appropriate accountability for those operating in this area. We would welcome greater detail on the proposals relating to the use of shotguns to kill wild deer, for example the circumstances where the use of shotguns is a “necessary, or appropriate method of managing deer” (p.20), and would highlight generally the potential animal welfare concerns in this context.

Theme 4: Changes to close seasons

Questions 19-20

We have no comments to make.

21. Please provide any further comments on the proposals set out in this section [here](#).

As mentioned above, it is important that the proposals have a robust evidence base.

Theme 5: Venison

Questions 22-23

Please refer to our comments at question 24.

[24. Please provide any further comments on the proposals set out in this section here.](#)

We highlight the importance of there being clarity about the purpose(s) behind any requirements on venison dealing and that the requirements are tailored to those purposes.

We note a need to understand how the traceability proposals will work and interact with current food hygiene legislation, for example requirements for a holding number, and the considerations around the supply of the seller details. The extent to which any special requirements are commensurate with what is expected from other sources of meat and proportionate to any special considerations for venison should be considered.

We also note that consideration should be given to the interaction of the proposals in relation to wild deer compared with farmed deer.

Theme 6: Kept and farmed deer

Questions 25-29

We have no comments to make.

For further information, please contact:

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