

PROPOSAL – A NEW LICENSING SYSTEM FOR WILD DEER MANAGEMENT

SUMMARY

**This proposal mainly addresses the third item in the LRRG’s remit:
“How land reform will:**

- **Generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland.”**

The issue of management of wild deer occupies a position right at the heart of these relationships, impacting fundamentally on all their components – land, people, economy and environment – especially (but not exclusively) in the highlands, and especially (but not exclusively) on sustainable forestry¹.

The current system for the regulation of deer management in Scotland is no longer fit for purpose in the 21st Century. It reflects long-outdated assumptions about the balance of land use interests most suited to the nation’s needs. Its reliance on voluntary participation places many aspects of wider public interest in serious jeopardy. In many parts of Scotland, damage is being caused to these relationships by excessive dominance of one set of interests over all others.

The time has come to consider a system of licensing which obliges owners of land either to participate themselves in meeting acceptable standards of deer control, or to allow other qualified persons to do so on their behalf.

We believe such a system would be a very significant contribution to land reform. It would be fair, bringing about significant change only where this is needed, validating the approach already taken by responsible land owners. It would also

- **ensure that *all* deer populations are managed to protect a wide suite of public interests affecting the relationships between land, people, economy and environment;**
- **offer an opening to a wider range of people to get involved in deer management, bringing more diversity to the local economy; and**
- **influence a more balanced culture of sporting estate management, gradually encouraging more diversity of ownership.**

This paper briefly outlines the relevant issues and proposes that Scottish Government should make a commitment to develop and

¹ A key interest of the Forest Policy Group (see <http://www.forestpolicygroup.org/fpghome.htm>)

introduce through legislation an appropriate system of licensing to bring long-overdue reform to the management of wild deer.

1 BACKGROUND

Red deer have a unique place in Scottish land use culture. Long regarded as a noble quarry for the sport of kings, the hunting of red deer *Cervus elaphus* remains an emblem of social privilege reflected in the essentially 19th Century phenomenon of the 'sporting estate'. Such properties, usually extending over thousands of hectares of highland territory², are usually owned and managed with two principal objectives – private recreational use (deer stalking, grouse and pheasant shooting and salmon fishing) and maintenance of the capital value of the asset³.

This status has enabled the traditional culture of deer management to escape fundamental reform, despite the persistent controversies which it arouses, and despite falling way out of step with other countries of Europe and North America.

The absence of natural predators has meant that, unless they are regularly culled, deer population numbers tend to increase. Red deer, as well as roe and the introduced sika and fallow, have risen by a factor of 3 or 4 in the last 50 years. Serious concerns are raised over their impact on a wide range of affected interests - the wider community, the environment, and even the welfare of the deer themselves.

Management of wild deer is not a simple matter. They belong to no-one; they are a public resource. However, the right to 'take' them is severely restricted. Legislation going back to the 19th Century has made this right, with a few exceptions, exclusive to the owner of the land on which they occur.

2 DEER MANAGEMENT GROUPS

However, wild deer are not normally confined within ownership boundaries, so – in most of the red deer range, at least – land owners meet periodically in local Deer Management Groups (DMGs), dominated by the 'sporting estate' culture, to discuss shared interests in the management of their local deer population. However, the record of these groups is not impressive; an official report⁴ in 2003 described their overwhelming failure to influence action on the ground or even to engage all relevant owners, let alone the representatives of wider interests.

In most of the country, therefore, deer management is undertaken, if at all, at private expense, largely for the fulfilment of individual land owner's aims. In the upland range of red deer these typically involve ensuring a **plentiful**

² Total area of red deer range: at least 3.5million ha

³ The valuation of a 'sporting estate' is still based partly on the size of its annual game harvest, including the number of stags available for the owner to 'take' in a year.

⁴ Review of Deer Management Groups – Deer Commission for Scotland 2003

supply of 'shootable' stags – both for stalking, and for the maintenance of the capital value of the property (which is partly dependent on stag numbers).

It is important to recognise the fundamental importance of this motivation – plentiful 'shootable' stags - in maintaining the gulf between the private interest (more deer) and the public interest (fewer deer). The short term costs of higher cull levels is also a factor.

Great efforts are made by some owners to respect wider interests and keep numbers within reasonable limits by the culling of hinds. However, their task is made harder by others who, deliberately or through neglect, allow deer numbers to exceed any justifiable levels. In these circumstances the public interest is highly vulnerable; as wild animals, deer fall outside the system of regulation and incentives which apply to the management of domestic livestock (mainly sheep), which occupy much of the same range.

Serious issues also arise on most of Scotland's lower ground, including in built-up areas, where the pattern of ownerships and objectives is much more varied and complex, and where increasing numbers of roe deer raise a variety of damage and safety issues. In these areas, few DMGs are established and examples of organised collaborative management are even scarcer.

3 IMPACTS OF HIGH DENSITIES OF DEER

Deer are naturally forest animals. In the uplands, a sustained regime of unnaturally intensive grazing and browsing by deer and sheep over the last ten or fifteen decades has damaged or eliminated tree growth, denuding the landscape, impoverishing the soil and affecting the hydrology, ecology and productivity of the land.

These impacts profoundly affect the health of the rural economy and the ecosystem services which would help it to prosper - freshwater fisheries, biodiversity conservation, landscape quality, access and recreation, carbon sequestration, water catchment management and public safety on roads and airfields. In each of these aspects, reductions in deer populations from the current norms of 20-40 down to 5-10 per sq km would greatly benefit the public interest, locally and nationally.

As a result of all four species of deer⁵ increasing, both in numbers and in the extent of their range in both lowlands and uplands since 1959, it is now difficult to establish woodland anywhere - the costs of deer culling and/or fencing to defend against such a scale of threat are often simply too high.

⁵ Sika and fallow deer are also present, and spreading. In general their impacts are similar to the red deer, with which sika is now hybridising uncontrollably on the mainland.

4 LEGISLATION

This is not a new issue. The 'red deer problem' gave rise to no less than seven separate government appointed inquiries between 1872 and 1954⁶, culminating in legislation in 1959. The Deer (Scotland) Act of that year required land owners to take account of damage to agriculture and forestry. Nevertheless, the urgency of exerting more effective control was a constant refrain in the annual reports of the Red Deer Commission as numbers rose steadily to at least three times their 1959 levels. Not until 36 years later, with SNH clamouring for radical reductions⁷, was the legislation extended in 1995 to include protection of the natural heritage, following implementation of the EU Habitats Directive. Only in the recent Wildlife and Natural Environment Act (2010) has the list has been widened to cover 'public interests' in general.

5 NOT FIT FOR PURPOSE

The effectiveness of all this legislation is however another matter. Powers and resources for enforcement remain severely limited. Encouraged and advised by government agencies, some owners have made great efforts to collaborate with others in DMGs, and some of these groups have done excellent work; however, they are few and far between. Meanwhile the capacity of public agencies to intervene in the wider picture is at best weak, and at worst absent altogether.

In the 15 years since the 1995 Act, the relevant Agencies have dedicated almost all their available resources to a small minority of sites, largely those affected by statutory designations⁸, where standards of biodiversity protection must meet the requirements of the EU law to avoid infraction proceedings. Even here, reductions in SRDP budget affect SNH's influence on owners to maintain sites in favourable condition. Compulsory measures, provided in the legislation since 1959, have been consistently deemed unworkable and never used. So regulation, even on priority sites, is effectively confined to extremely expensive methods of incentives and persuasion.

On the remaining majority of the vast area of land in question, tradition reigns supreme; high densities of deer are tolerated, despite the widely accepted reality that a more 'sustainable' approach would bring widespread benefits.

The particular pattern of land tenure in Scotland clearly presents challenges in this regard; the dominance of the 'sporting estate' culture has become a fixed working assumption in land use policymaking. With legislators repeatedly unwilling to challenge this assumption, much work, not least by DCS and the RELU⁹ research programme, has been dedicated to exploring improved *methodologies* for collaboration between different interest groups. But the

⁶ The Management of Wild Red Deer in Scotland - Callander and Mackenzie 1991 (Rural Forum)

⁷ Red Deer and the Natural Heritage SNH, 1994

⁸ Eg Glenfeshie

⁹ Rural Economy and Land Use

<http://www.relu.ac.uk/news/policy%20and%20practice%20notes/Irvine%2018/Irvine.pdf>

success of these approaches is always limited by the statutory presumption of voluntary participation - and a significant segment of the land owning sector has been consistently unwilling to sign up.

6 COSTS

Another unsatisfactory aspect of the status quo is the public cost of policy failure. Excessive deer numbers affect both public and private realms. Dealing with the consequences of higher densities, where this can be attempted, imposes a heavy cost on the public purse¹⁰ and on any neighbours whose interests are adversely affected. The losses of biodiversity and other non-market public goods are difficult to quantify. But these all have costs which are met directly or indirectly by the public, including:

- the costs of the regulating agency (now SNH) in seeking to influence action through incentives and persuasion;
- the culling efforts of the Forestry Commission (which despite managing only 8% of the land area delivers a colossal 36% of the whole nation's annual - but still inadequate - cull¹¹);
- the incentive which has to be included in the forestry grant to cover protection of private sector plantations from high densities of deer ;
- the production losses in grant-aided forestry and agriculture due to deer damage;
- the National Lottery grants of £millions paid to landscape restoration projects which are only necessary because of chronic overgrazing;
- the economic costs and insurance claims relating to road traffic accidents caused by deer¹²;
- construction of flood defences necessitated by the flashiness of overgrazed catchments upstream.

7 REFORM

The experience of the last 150 years shows that little progress will be made without more radical reform. The purpose of this paper is **to propose reform based on a 21st Century objective of sustainable deer management, giving adequate protection to a suite of relevant public interests, and delivering the objectives of the Land Use Strategy.**

The status of one public policy imperative – carbon sequestration – is just one illustration of the extent to which the public good is currently compromised by the irresponsible exercise of private rights. Notwithstanding the economic downturn, Scottish Government is committed to a budget of half a *billion*

¹⁰ See for example the costs of supporting the Control Agreement in one SAC area - Caenlochan

¹¹ FCS National Committee paper NC 33/06

¹² “*there are more than 7000 deer-related motor vehicle accidents every year in Scotland, on average causing about 70 human injuries. The economic value of these accidents is £5 million*” – SNH press release 25/10/2012

pounds to expand woodland by 10,000ha per year over the next decade¹³ in order to capture carbon.

Meanwhile, owners of large swathes of land remain free to harbour deer in numbers that not only *eliminate* tree growth by browsing, but also *exacerbate* carbon emissions by damaging peat deposits with trampling¹⁴. Public policy is currently powerless in the face of this widening gulf between private and public interests.

The case for placing more demanding obligations on those responsible for managing deer, in return for the exclusive privilege of hunting to which they are entitled, clearly needs to be resuscitated urgently. Convinced by this argument, the Deer Commission for Scotland recommended in 2010 an enforceable duty on land owners to manage deer sustainably. This was opposed by land owning representative bodies¹⁵. The Scottish Government – a minority SNP administration at the time – felt unable to support such a step, committing only to a voluntary code of practice which relies on willing co-operation.

Red and roe deer are keystone species in the landscape. This paper raises no objection to the practice of hunting them for sport – a way of financing a necessary cull. **The issue is the *impact* of excessive deer populations, and the extent to which the owners of land remain free to exercise their exclusive rights in such a way as to cause such serious levels of conflict with wider interests.**

8 A NEW LICENSING SYSTEM

It is proposed that Scottish Government commit to introducing a system of licences, placing the relationship between private rights and public interests on a new and more up-to-date footing. The design of such a system would need to be considered with care; the following principles are offered as a starting point for discussion:

- a. Licenses would be issued by SNH to land owners who meet a Local Deer Management Standard – ie show that they can pursue their own legitimate rights whilst also meeting responsibilities to protect and promote the wider public interest;
- b. A Local Deer Management Standard (LDMS) would identify
 - i) the target population level, for a Deer Management Group area , allowing a balance between private and public interests
 - ii) the contribution to the Group cull to be made by each landholding

¹³ Low Carbon Scotland . Scottish Government 2011

¹⁴ “In many parts of the deer range, deer numbers are currently at levels which are not compatible with the Governments aspirations for woodland expansion” – SNH 2012

¹⁵ These interests are represented by four organisations – Scottish Land and Estates, The Association of Deer Management Groups, The British Deer Society, and Scottish Gamekeepers Association

- iii) any other holding-specific responsibilities needing to be met for protection the public interest *vis à vis* deer management;
- c. LDMSs should be prepared voluntarily by Deer Management Groups, advised by SNH, but if these are unforthcoming or inadequate, SNH should have powers to impose them;
- d. Standards of this kind are already prepared as a basis for Control Agreements usually applied to Natura sites for biodiversity conservation. This principle could be extended to include other aspects of the public interest including catchment management, fisheries, carbon sequestration, road safety, etc;
- e. In the event that an owner fails to qualify for a license, the system should provide for the allocation of hunting rights on that land to another license holder;
- f. Costs of regulation of the industry are currently borne entirely at the public expense. This is unreasonable, especially because the most uncooperative owners incur the highest intervention costs, and sporting estates can already benefit from a favourable tax regime. "Sporting rates" should therefore be re-introduced by removing the exemption that currently applies to hunting/sporting businesses in the non-domestic rates¹⁶. This could be a default regime, applying until a system of licensing is adopted. At that point, a charge would be made for licences – the resulting funds being used to pay for the regulation process. The greater the responsibility taken by the private sector, the smaller the charge needed to pay for regulation (the polluter pays principle, applied to the sector as a whole);
- g. Licenses could be held by any person who holds (or whose representative holds) a Deer Management Qualification (Level 2) and can demonstrate an ability to meet the LDMS in a particular area;
- h. A licensing system, and the standards it promotes, would help shift the focus of publicly funded forestry grants towards support for deer control rather than fencing;
- i. Initial opposition of some land owners should be anticipated. But in due course it should be clear that this is merely a formalisation of an approach already adopted by the more enlightened owners of land who exercise their rights responsibly;
- j. The benefit of a formal system to the landowning sector is that it forces reluctant owners into participation, so removing the most serious threat to the proper function and reputation of the sector as a whole;
- k. Objections based on reference to the Human Rights legislation should be robustly countered on the grounds of the wider public interest justification;
- l. There is little justification for the fear that permanent reductions in deer numbers would lead to a loss of jobs in estate management – indeed the reverse may well be true, with more economic activity in deer management, supporting a larger number of more secure jobs for trained stalkers.

¹⁶ Sporting estates were (very controversially) exempted from rates by the Conservative Government in April 1995. A review of business rates is currently underway.

<http://www.scotland.gov.uk/Publications/2012/11/6551>

9 CONCLUSION

A licensing system along these lines would

1. make a major contribution to generating, supporting, promoting and delivering new relationships between land, people, economy and environment in many parts of Scotland;
2. accord closely with a recommendation of an authoritative report by the Royal Society of Edinburgh in 2008¹⁷: “***The Scottish Government should....facilitate the development of sustainable deer management within a revised regulatory and incentive-based framework so that this sector contributes to the integrated land use policy proposed in this report.***”
3. bring Scotland much more into line with other major European nations, USA, and Canada with respect to deer management and regulation;
4. begin to remedy a century and a half of failure in public policy relating to deer management, which has adversely impacted society’s wider interests on a huge scale;
5. herald an era of restoration in landscapes described more than sixty years ago as ‘*a devastated terrain*’ by one of Scotland’s most eminent land use ecologists¹⁸;
6. significantly bolster the rural economy in many ways, including the greater number of stalking days let to stalkers and visitors.
7. fulfil some of the rhetoric of land reform which has permeated Scottish politics for many decades.

¹⁷ Recommendation 23 of the Royal Society of Edinburgh’s report on their Committee of Inquiry into the **Future of Scotland’s Hills and Islands** - 2008

¹⁸ A West Highland Survey – Frank Fraser Darling 1955