

# MANAGEMENT DEER STALKING AGREEMENTS

## Introduction

The aim of this guide is to describe some of the more common models by which deer stalking is permitted. The scope of this guide is limited, where the phrases “deer stalking” and “deer rights” are used they refer only to the legal taking of deer by shooting and any connected activities.

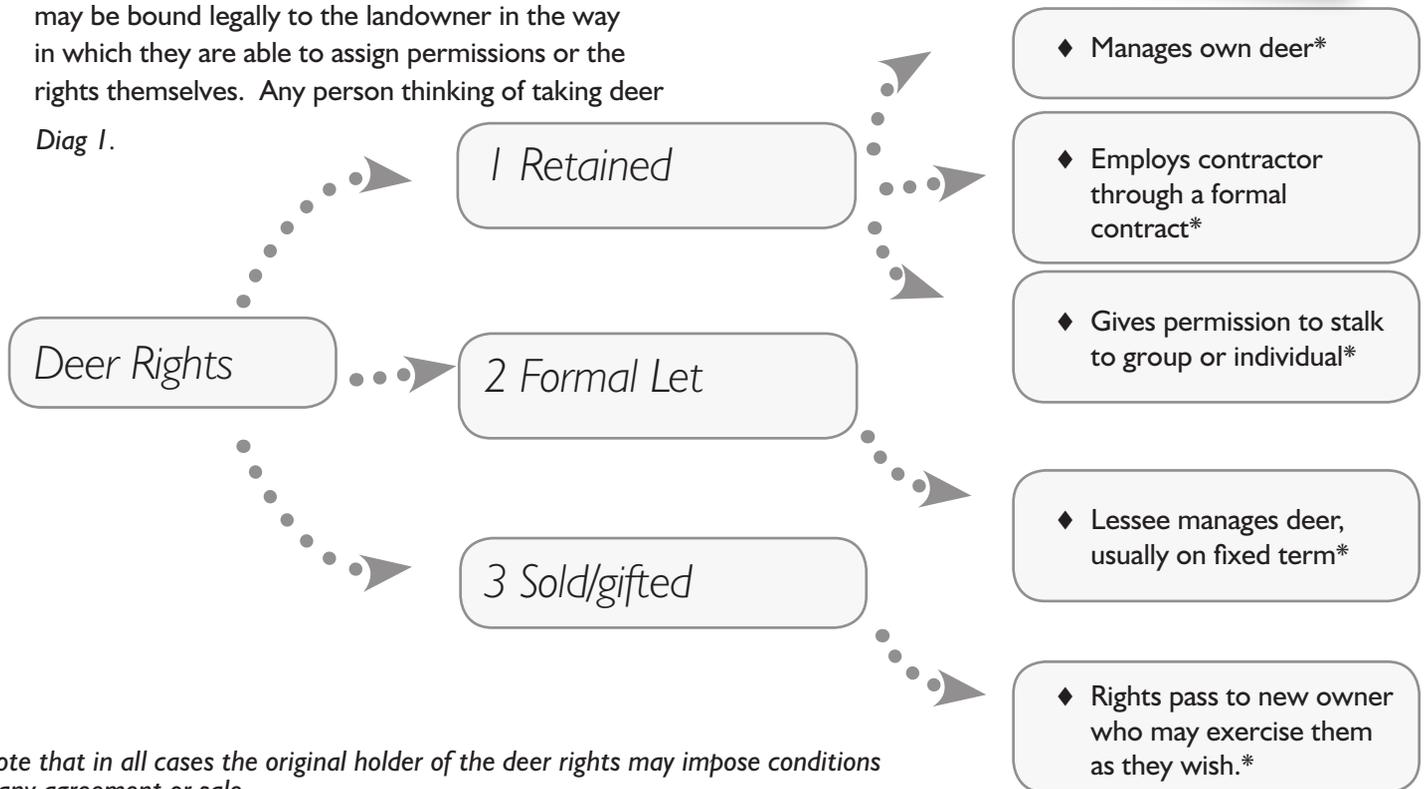
This guide is linked to a generic licence agreement (not a lease) which can be found in the Associated Information section of the Best Practice guides.

## Deer rights

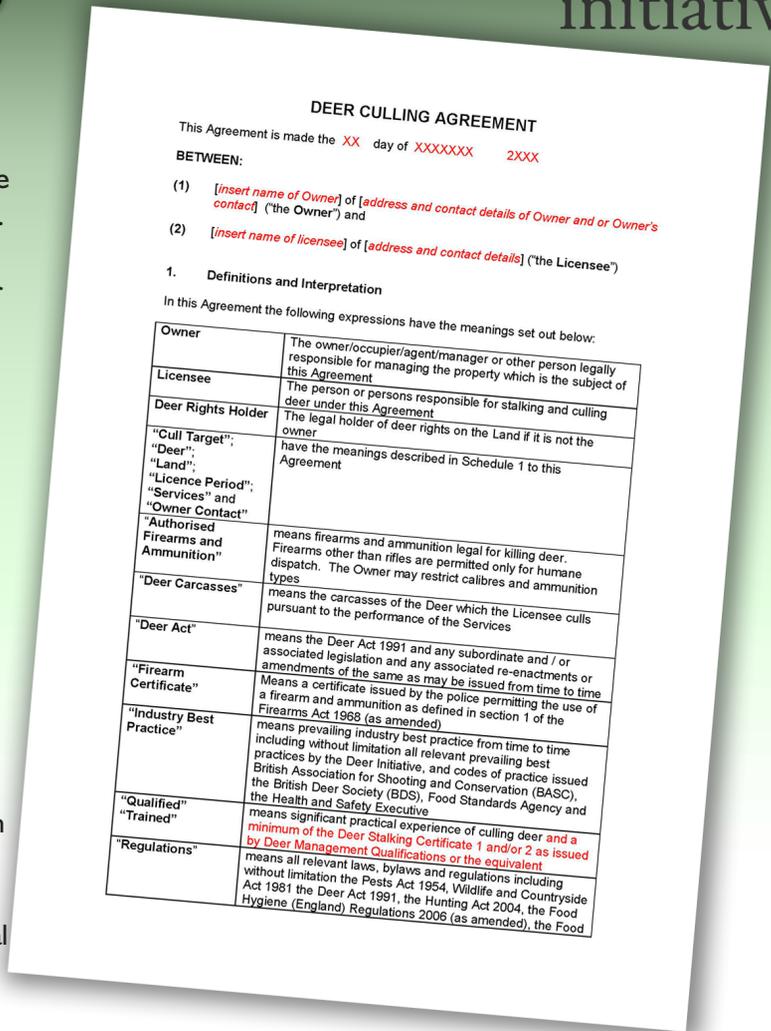
In England and Wales the right to take deer often rests with the freehold owner of the land but deer rights can be legally assigned, permanently or temporarily, exclusively or concurrently, to a tenant or other person. Because deer rights may have been assigned separately from game and other rights, any agreement involving deer should mention deer specifically, as deer are not always “game” in the legal sense.

Note that the holder of deer rights, if not the owner, may be bound legally to the landowner in the way in which they are able to assign permissions or the rights themselves. Any person thinking of taking deer

Diag 1.



\*Note that in all cases the original holder of the deer rights may impose conditions on any agreement or sale.



rights should be certain that the person that they are dealing with is actually entitled to grant the rights (see *Diag. 1*).

## Deer and tenanted land

As an “occupier” a land tenant could expect to be able to cull deer (e.g. to prevent damage) or rely on Section 7 of the Deer Act to shoot deer out of season. Before doing so it is advisable to check that doing so will not put them in breach of any tenancy or other private agreement regarding deer rights.

Note that a Natural England licence to shoot deer out of season cannot be granted for the purpose of preventing crop damage (see *Out of Season legislation guide*).

Under Section 20 of the Agricultural Holdings Act 1986, if the tenant of an agricultural holding sustains damage to their crops from deer, and the right to take deer is vested in the landlord or a third party by the landlord, the tenant may be entitled to compensation from the landlord for the damage. There is no equivalent right contained in the Agricultural Tenancies Act 1995, such tenants should

consult the provisions of their tenancy agreement to ascertain their specific rights.

Section 98 of the Agriculture Act 1947 allows for a notice to be served on the person who has the right so to do, to kill deer in order to prevent damage. It is unusual for this section of the Act to be invoked.

In all cases the various parties are encouraged to communicate with a view to minimising misunderstandings and to ensure that deer are managed effectively with the least damage.

## Forms of agreement

Permission to take deer, or the deer rights themselves, might be assigned in a number of ways, as described in *Diag 1*. which assumes that the deer rights were held originally by the landowner. If they are held by someone else there may be additional legal conditions, imposed by the landowner, affecting how the rights may be exercised, re-sold, let or otherwise made available to a third party.

*Table 1* relates to *Diag 1* and describes some of the ways in which agreements might operate. Legal advice should always be sought before entering into such agreements.

*Table 1.*

Location of deer rights	Assigned to whom	Form of assignment	Advantages	Potential Disadvantages
I.Retained	Individual or group	Verbal or written permission but with no written agreement.	Simple	Potential for misunderstandings. Unwritten agreements can be inefficient with respect to achieving management objectives. Experience/efficiency of stalkers may be variable, there is a risk that minimum culls are not achieved
I.Retained	Group or individual, who may or may not pay a fee	Licence agreement (deer rights retained but permission given to stalk deer).	With a written licence there is more opportunity to tie the licensee into achieving management objectives. Licensee may provide a significant part of the stalking infrastructure such as high seats. No employment overhead for employer.	Experience/efficiency of stalkers may be variable, there is a risk that minimum culls are not achieved, but sanctions may be applicable under agreement terms.
I.Retained	Paying clients (accompanied by employee)	Week/day outing.	Employee accompanies clients at all times. Those clients with limited time and or/experience have an increased chances of success and usually value being able to gain skills and experience under professional supervision. Employee should be able to ensure appropriate behaviour from clients and provide logistical back up for them. Completion of agreed female and male cull should be guaranteed.	Employment of staff together with administrative and stalking infrastructure costs can be a significant responsibility and financial overhead. Supervising stalking clients usually reduces culling efficiency (in terms of deer culled per outing) but this may be significant only if clients are also shooting females. Stalking clients are required to commit to outing dates, often weeks in advance, there is often little opportunity to fill late cancellations

Location of deer rights	Assigned to whom	Form of assignment	Advantages	Potential Disadvantages
1. Retained	Paying clients (supervised by employee or syndicate leader, but un-accompanied while stalking)	Week/Day outing or syndicate.	Supervisor places clients but may not be with them at all times. Supervision of clients is looser than with accompanied clients, but more clients can be placed on the ground at any one time. As experience of regular clients increases, owner/manager is in effect gaining extra help to achieve cull.	Employment of staff together with administrative and stalking infrastructure costs can be a significant responsibility and financial overhead. There is a risk of unaccompanied clients straying from their designated area or agreed stalking remit. Completion of female cull may only be achieved if supervision is strict and /or supervisor has time to contribute to cull. Individual client efficiency may be lower than that of an employee.
1. Retained	Contractor	Contractor is paid a fee by rights holder to provide a service, often to achieve a reduction cull.	Requires minimal supervision by landowner (although they may still expect to be informed of stalking visits). Full contract should ensure that owner objectives are met. Enables professional deer management to be carried out in stalking areas that may not justify a full time employee. Completion of agreed culls should be guaranteed. Contractor will be able to provide stalking infrastructure (e.g. high seat, extraction equipment, and possibly mobile larder).	Deer contractor is a significant cost to the landowner. Cost can be offset by venison sales, reduction of losses due to deer impacts, and/or letting the stalking of male deer separately. Suitable contractors may be hard to find. Liaison with other land users and locals may not be ideal unless carefully managed.
2. Let	Professional for sub-letting /week/day/ outing use	Let . (Rent is paid, usually over a fixed term and on a ££s per woodland or total land area basis).	Requires minimal supervision by landowner (although they may still expect to be informed of stalking visits). Full contract should ensure that owner objectives are met. If an agreed female cull is included in the lease, a professional is likely to be able to complete it safely and efficiently. Enables income to be derived from areas that may not justify a full time employee. A professional should be able to ensure appropriate behaviour from sub-let clients and provide logistical back up for them. Lessee may provide a significant part of the stalking infrastructure such as high seats.	Professional needs to make a financial margin so will want to keep letting rate down. Lessee may also lease other properties and thus may not be able to meet commitments to all. Male deer may be over exploited, but not if contract is well made and adhered to. Liaison with other land users and locals may not be ideal unless carefully managed
2. Let	Organisation, group or individual for recreational use	Let . (Rent is paid, usually over a fixed term as above).	Requires minimal supervision by landowner. Potentially maximises income. Enables income to be derived from areas that may not justify a full time employee. Lessee may provide a significant part of the stalking infrastructure such as high seats.	Experience/efficiency of stalkers may be variable, there is a risk that minimum female culls are not achieved if females are included in the agreement. Male deer may be over exploited. Liaison with other land users and locals may not be ideal unless carefully managed
3. Sold	Organisation or Individual	Sold or other permanent arrangement.	No responsibility for deer management	No control on how rights exercised unless other agreements relating to such matters as access, other land uses, min/ max deer numbers etc have been made.

Permissions, licences or lets may extend to male deer only. In this way the rights holder retains the ability to guarantee the control of female numbers, according to management objectives.

It is expected that all lessees, licensees, clients and contractors will be responsible, honest, and conscientious, and that they will not deliberately damage the deer resource for the future.

# Agreement headings

It is recommended that there is a formal, written agreement between the holder of the deer rights (usually the landowner) and the person(s) shooting deer. This can help to avoid misunderstandings and ensure that each party's objectives can be met.

In all cases, the person considering leasing out, selling or otherwise passing on the rights, should be clear about their objectives for the deer, and consider the

implications of allowing another party to take deer, including the need to impose conditions.

Landowners could consider registering sporting rights, which can be done separately from the registration of the land, with the Land registry.

Table 2\* lists a number of items that should be considered when constructing an agreement. It is recommended that professional advice is sought during its creation, for example from a solicitor or land agent. See also generic agreement in the Associated Information section of the Best Practice guides.

Table 2.

Condition/clause/description	Comments
A description of the area concerned and contacts	Name of property. Boundaries should be clearly defined on a map (the land and its precise boundaries should be familiar to stalkers before any shooting takes place). Full contact details should be kept updated.
The period of the lease/licence/contract	Usually a minimum of one year (may be shorter for contract culls), term often based on start/finish of close seasons. Revision of agreement usually annual and dependent on satisfactory performance. Longer terms offer more security, both for the tenant, making it more likely that they will become more efficient over time, invest in infrastructure, and build a well structured management programme, and for the landowner since there is a predictable income and there is potentially less chance of the deer being overexploited. See also Early termination of agreement.
The rent (or fee) payable and due date	Amount, currency, annual increases (if any), VAT payments, and venison value if it is part of the agreement. Failure to pay within a reasonable period must be considered as grounds for termination of the agreement. Renewal terms, if relevant, should be stated.
Location of stalker home base to the land	Though not usually a condition, the distance that stalkers have to travel to the land may affect their number of visits, time spent stalking or maintaining infrastructure, ability to respond to callouts for injured deer and so on. Consideration should be given as to whether this materially affects the stalker's ability to comply with agreement conditions. Consideration may have to be made as to whether temporary sleeping accommodation will be provided or permitted.
Access rights.	Access is usually concurrent with the owner/occupier and other land users. Consider agreed access routes and areas, prohibited areas, day/night access, access via other ownerships, vehicular access to remove carcasses/place high seats, parking. Conditions may include a requirement to notify of intention to stalk on the land, either covering a period of time, or for each visit. There should be an access protocol in case of disease outbreak ( e.g. foot and mouth disease). Stalkers should be required to carry proof of permission to access land for the purpose of stalking deer (supplied by the owner/occupier/rights holder ).
Site-specific conditions for certain situations	e.g. how stalking is conducted during woodland or agricultural operations, game shooting, or during any other normal activities on the property. Whether shooting can take place on Sundays/holidays or in areas of high public use, near or on footpaths.
Compensation and liability	Compensatory/liability clauses e.g.: for damage suffered due to the actions of or neglect by, either party, or against denial of access to land for a significant period of time, e.g. due to disease outbreaks.
Indemnity	Clause relating to loss, damage and injury caused by the owner/tenant/stalker exercising their rights. There is usually a requirement for individual stalkers to hold public liability insurance cover of the type offered by shooting organisations. Professional and contract stalkers should have business insurance.
Arbitration	Consider including a clause relating to an agreed means of arbitration should disputes or differences occur during the period of a lease agreement.
Early termination of agreement	A clause covering early termination of the lease in the event of sale or other force majeure change. Consider other criteria which would initiate the termination of the agreement, for instance, a safety violation, or failure by the lessee/licensee to fulfil a condition of the agreement such as not culling sufficient females where no mitigating circumstances exist.
Third parties	A clause preventing (or allowing) sub-letting to third parties or stalkers being accompanied by third parties.
Standard of practice	All activities relating to the agreement should be conducted according to the law and prevailing best practice/codes of conduct

Condition/clause/ description	Comments
Shooting rights	A description of exactly what the agreement allows the lessee/licensee to shoot/take and whether this includes both sexes of deer, certain species of deer or species other than deer. Firearms types and calibre limits may be imposed.
Concurrent rights	The rights holder may wish to retain concurrent stalking rights. This is recommended in most cases and especially where it is essential that a minimum cull is achieved, as it allows the rights holder to bring in extra resources to complete the cull if required.
Risk assessment	A lessee/licensee should be asked to agree to or provide a simple written risk assessment relevant to the agreed deer management activities. See Risk Assessment guide.
Information required by the rights holder	A clause requiring the lessee/licensee to provide information such as: Firearms certificate details including appropriate conditions Proof of third party indemnity CV including details of deer experience References and/or evidence of past good practice. Qualifications (such as the Deer Stalking Certificate 1 and 2, and meat hygiene certificate) There may be a requirement to demonstrate shooting ability, especially in the case of Week/Day/Outing contracts
Deer management plan	There should be a formal deer management plan which is clear to all parties. It is usually agreed between the owner and the lessee and there may be targets set by Stewardship or woodland grant conditions. It is recommended that a minimum figure or range of figures is set for the female cull if that is wholly or in part the responsibility of the lessee/licensee. Maximum figures are often agreed for males. Failure to achieve agreed female cull figures should be considered as a potential switch for termination of the agreement. See Deer Management Plan guide.
Impacts caused by deer	Especially where stalking rights are let, the landowner/occupier may wish to set conditions on the degree of deer damage that will be tolerated to crops and other property, or set specific habitat based conditions that must be met. Independent assessment of impacts may be part of the agreement. See Deer impacts and Woodland Impact survey guides.
Records	A condition of any agreement should be to require the lessee/licensee to keep accurate records of all deer killed and other information as agreed. These to be presented on a due date or by request as agreed. See Cull records guide.
Handling/Retention/Sale of venison.	Carcasses (or their value) might either be retained by the rights holder, might be shared, or might become the property of the lessee/licensee. Usually the lessee/licensee is responsible for carcass preparation. Either party may be responsible for the sale of carcasses. Larder facilities may be made available on the land and if so may be subject to further conditions. A lessee/licensee may be asked to provide, or comply with, a HACCP based plan or carcass quality assurance scheme if they take part in carcass preparation on the property. See Meat Hygiene guides.
Waste disposal	Agreements should consider responsibility for, and methods of, legally disposing of carcass derived waste and other deer related waste (e.g. trimmings from high seat clearance), including litter.
Activities other than deer culling	Landowners will usually require consent before work such as habitat improvement work is undertaken, for example, felling or pruning of trees in order to create high seat sight lines or deer glades.
Liaison/poaching	A general description as to how the lessee/licensee is expected to behave with respect to liaising with the occupier, other land users (especially game shoots), local deer management groups and the public, and how anti-poaching activities might be supported.
Grant/licence applications	Landowners/Occupiers usually retain the right to initiate or manage agreements such as land stewardship/woodland grants, deer control using Sec. 7 of the Deer Act 1991, or night /out of season shooting licences. Stalkers will be expected to comply with grant conditions regarding culling. See Grant Aid guide.
High seats	A condition relating to the construction, maintenance, placement and safe use of high seats and any other deer related structures, and who is responsible. See High Seats guide.
Injured deer	A lessee/licensee is expected to have an understanding of injured deer procedures, to deal with injured deer, and have access to a suitable dog. It is sensible to consider the procedure for an injured deer which crosses the property boundary. See Follow Up guide.

## Further Info

<sup>1</sup> The Land Registry <http://www.landregistry.gov.uk/legislation/lract2002/summary/> and <http://www.landregistry.gov.uk/assets/library/documents/lrpg016.pdf>