



# Deer (Scotland) Act 1996

## 1996 CHAPTER 58

### PART II

#### CONSERVATION, CONTROL AND SUSTAINABLE MANAGEMENT OF DEER

##### *Close seasons*

#### **5 Close seasons**

- (1) The Secretary of State—
  - (a) shall, in relation to the female of every species of deer; and
  - (b) may, in relation to the male of any species of deer,by order fix a period in each year during which no person shall take or wilfully kill or injure any deer of the sex and species named in the order, and different periods may be so fixed in relation to different species and in relation to the male and female of any species.
- (2) Before making an order under subsection (1) above, the Secretary of State may consult such persons or organisations as he thinks fit, or may direct the Commission to carry out such consultation on his behalf.
- (3) Where the Secretary of State has directed the Commission to carry out consultation on his behalf under subsection (2) above, they shall—
  - (a) report the results of that consultation, and
  - (b) tender such advice as they may wish in relation to the making of an order under subsection (1) above,to him within such period as he may so direct.
- (4) Where the Secretary of State or the Commission have carried out consultation under subsection (2) or (3) above the Secretary of State shall have regard to the results of that consultation, and to any advice tendered by the Commission under subsection (3) above, before making an order under subsection (1) above.

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- (5) Subject to sections 14 and 25 of this Act and to subsections (6) and (7) below, any person who contravenes an order made under subsection (1) above shall be guilty of an offence.
- (6) Without prejudice to section 26, and subject to section 37, of this Act, and notwithstanding anything in any agreement between an occupier of land and the owner thereof, the Commission may authorise the owner or the occupier of any land or any person nominated in writing by either of them to take or kill, and to sell or otherwise dispose of, any deer found on that land during the period specified in relation to that sex and species of deer in an order under subsection (1) above, where they are satisfied that—
- (a) the taking or killing is necessary—
    - (i) to prevent serious damage to any unenclosed woodland which forms part of that land, or serious damage, whether direct or indirect, to the natural heritage generally; or
    - (ii) in the interests of public safety; and
  - (b) no other means of control which might reasonably be adopted in the circumstances would be adequate.
- (7) Subject to section 37 of this Act, the Commission may, for any scientific purpose, authorise any person to take or kill deer during the period specified in relation to that sex and species of deer in an order under subsection (1) above.

### *Control agreements and control schemes*

## **6 Control areas**

In this Act the area to which a control agreement or a control scheme relates is, in relation to that agreement or, as the case may be, scheme, referred to as the “control area”.

## **7 Control agreements**

- (1) Subject to the following provisions of this section, where the Commission are satisfied that, on any land, deer—
- (a) have caused, are causing, or are likely to cause—
    - (i) damage to woodland, to agricultural production, including any crops or foodstuffs, or, whether directly or indirectly, to the natural heritage generally; or
    - (ii) injury to livestock, whether by serious overgrazing of pastures, competing with any such livestock for supplementary feeding, or otherwise; or
  - (b) have become a danger or a potential danger to public safety,
- and that for the prevention of further such damage, injury or, as the case may be, danger or potential danger, the deer in that locality should be reduced in number, they shall form a preliminary view, having due regard to the nature and character of the land in question, as to what measures should be taken for that reduction in number; and, for the purposes of this section and section 8 of this Act, “measures” includes the taking and removal of deer.

- (2) For the purposes of subsection (1) above “the natural heritage” includes any alteration or enhancement of the natural heritage which is taking place, or is proposed to take place, either naturally or as a result of a change of use determined by the owner or occupier of the land in question; and “damage” shall be construed accordingly.
- (3) Where it appears to the Commission that the circumstances obtaining in a particular area require the complete exclusion of all deer, or of all deer of any species, from that area, they may form the view that any deer within that area should be taken, removed or killed.
- (4) After they have formed—
- (a) the preliminary view mentioned in subsection (1) above; or
  - (b) the view mentioned in subsection (3) above,
- the Commission shall consult with such owners or occupiers of land as the Commission consider to be substantially interested, to secure agreement—
- (i) that measures require to be taken;
  - (ii) as to what measures require to be taken, and within what time limit;
  - (iii) as to who is to carry out such measures; and
  - (iv) as to any other matters which appear to the Commission to be necessary for the purposes of such an agreement.
- (5) Where agreement is reached on the matters mentioned in subsection (4) above the Commission shall draw up an agreement (a “control agreement”) specifying the parties to it, and any such control agreement may—
- (a) describe the control area by reference to a map and specify the approximate extent of that area;
  - (b) specify the measures which are to be taken in relation to the deer in that area or any part of it;
  - (c) specify, where the deer are to be reduced in number, the number and, if necessary in the opinion of the Commission, the species, sex and class, of the deer to be killed in or taken and removed from the control area or any part of it, and the limit on the number of deer of each species, sex or class to be allowed to be established in the control area or any part of it;
  - (d) specify the measures which are to be taken by the owners or occupiers for the time being of land in the control area or any of them for the purposes of the agreement; and
  - (e) set out the time limits within which the owners or occupiers are to take any such measures,
- and the Commission shall send a copy of the control agreement to all the persons who were involved in the consultation referred to in subsection (4) above.
- (6) The Commission and any of the parties to a control agreement may agree at any time to vary its terms.

## **8 Control schemes**

- (1) Where the Commission are satisfied—
- (a) that—
    - (i) it is not possible to secure a control agreement; or
    - (ii) that a control agreement is not being carried out;

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and

(b) that—

- (i) deer have caused and are causing serious damage to woodland or to agricultural production, including crops and foodstuffs, or serious damage, whether directly or indirectly, to the natural heritage, or serious injury to livestock, however caused, or have become and remain a danger to public safety; and
- (ii) action is necessary to prevent such serious damage, serious injury, or danger,

they shall make a scheme (a “control scheme”) for the carrying out of such measures as they consider necessary for the purposes mentioned in subsection (1) or, as the case may be, subsection (3) of section 7 of this Act.

(2) Subsection (1) above does not apply in relation to any control agreement proposed or entered into for the purpose of altering or enhancing the natural heritage.

(3) A control scheme shall—

- (a) describe the control area by reference to a map and specify the approximate extent of that area;
- (b) specify the measures which are to be taken in relation to the deer in that area or any part of it;
- (c) specify, where the deer are to be reduced in number, the number and, if necessary in the opinion of the Commission, the species, sex and class, of the deer to be killed in or taken and removed from the control area or any part of it, and the limit on the number of deer of each species, sex or class to be allowed to be established in the control area or any part of it;
- (d) specify the measures which are to be taken by the owners or occupiers for the time being of land in the control area or any of them for the purposes of paragraphs (a) to (c) above;
- (e) prescribe time limits within which the owners or occupiers are to take any such measures as are mentioned in paragraph (d) above;
- (f) include any incidental, consequential or supplemental provisions that may be necessary.

(4) A control scheme may specify different measures to be taken by different owners or occupiers of land in the control area, and may provide for the extension of any time limit prescribed therein.

(5) Nothing in subsection (3) or (4) above shall empower the Commission to impose on any owner or occupier of land a requirement to construct a fence on his land or on any part of it against the movement of deer, and for the purposes of this section “fence” shall include any artificial obstruction.

(6) A control scheme shall require confirmation by the Secretary of State before it comes into operation; and Schedule 2 to this Act (which makes provision in relation to the making, confirmation, variation and revocation of control schemes) shall have effect.

(7) Where any control scheme has been confirmed, every owner or occupier shall take such measures as the scheme may require of him in accordance with its provisions.

(8) Where the Commission are of the opinion that any owner or occupier of land has failed to comply with subsection (7) above, they shall carry out the requirement, if they are satisfied that it is still necessary to do so; and where the carrying out of such

a requirement involves the killing or taking of deer, the Commission shall have power to dispose by sale or otherwise of any deer so killed or taken.

## **9 Recovery of expenses incurred in fulfilment of control scheme**

- (1) Where any expenses incurred by the Commission in the performance of their duty under section 8(8) of this Act exceed the amount of the proceeds of the sale of any deer killed or taken in pursuance of that performance, the excess shall be recoverable by them from the owner or occupier concerned.
- (2) The Commission shall furnish to any owner or occupier concerned a statement showing—
  - (a) the expenses incurred in the performance of their duty under the said section 8(8);
  - (b) the amount received in respect of the sale of deer; and
  - (c) the amount recoverable from any owner or occupier under this section.
- (3) Any owner or occupier who is aggrieved by a statement under subsection (2) above may, within one month of the statement having been furnished to him, appeal to the Scottish Land Court.
- (4) On an appeal under subsection (3) above, the Scottish Land Court may, if it appears to them to be equitable to do so, vary the amount recoverable from the appellant.
- (5) Subject to the approval of the Secretary of State, the Commission may, in any particular case, waive their right to any expenses recoverable under this section.

### *Emergency measures*

## **10 Emergency measures to prevent damage by deer**

- (1) This subsection applies where the Commission are satisfied—
  - (a) that deer—
    - (i) are causing serious damage to woodland or to agricultural production, including any crops or foodstuffs; or
    - (ii) are causing injury to livestock, whether by serious overgrazing of pastures, competing with any such livestock for supplementary feeding, or otherwise; or
    - (iii) constitute a danger or a potential danger to public safety;
  - (b) that none of their other powers is adequate to deal with the situation; and
  - (c) that the killing of the deer is necessary to prevent further such damage or injury or to remove the danger or potential danger.
- (2) Where subsection (1) applies and the Commission are satisfied that—
  - (a) the deer mentioned in that subsection come from particular land; and
  - (b) any person having the right to kill deer on that land will forthwith undertake the killing of the deer so mentioned,the Commission shall make a request in writing to that person to that effect.
- (3) Where a request under subsection (2) above has been made to a person, the Commission shall not issue an authorisation under subsection (4) below unless it

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appears to them that he has become unable or unwilling to comply with the terms of the request.

- (4) Subject to subsection (3) above, where subsection (1) above applies the Commission shall authorise in writing, subject to such conditions as may be specified in the authorisation, any person who in their opinion is competent to do so to follow and kill on such land as may be mentioned in the authorisation such deer as appear to that person to be causing the damage or injury or constituting the danger or potential danger.
- (5) Where, as mentioned in paragraph (a)(iii) of subsection (1) above, deer constitute a danger or potential danger to public safety, and, in the opinion of the Commission or the person authorised by them under subsection (4) above, the killing of the deer would itself constitute a potential danger to public safety, the person so authorised by the Commission shall instead take and remove the deer from the land in question by such means as are appropriate.
- (6) An authorisation under subsection (4) above shall remain in force from the date on which it is issued for such period, not exceeding twenty eight days, as may be specified in the authorisation.
- (7) Where the Commission—
  - (a) intend to issue an authorisation under subsection (4) above; and
  - (b) are of the opinion that any person is likely to be on any land to be mentioned in that authorisation,
 they shall as soon as practicable give to that person such warning of their intention as they consider necessary to prevent danger to him.
- (8) The Commission shall give to the owner of any land which is to be mentioned in an authorisation under subsection (4) above such notice of their intention to issue such an authorisation as may be practicable.
- (9) Without prejudice to section 16 of this Act, any notice to be served under subsection (7) or (8) above on an owner of land shall, where an agent or employee is responsible for the management or farming of the land, be duly served if it is served on the said agent or employee.
- (10) Where any deer has been killed or taken and removed from land under an authorisation granted by the Commission under subsection (4) above, the Commission shall have power to dispose of it by sale or otherwise.

## **11 Application of section 10 in relation to the natural heritage**

Section 10 of this Act shall apply in relation to the natural heritage as it applies to woodland, where the Commission are satisfied that deer are causing serious damage to the natural heritage—

- (a) on enclosed land; or
- (b) on unenclosed land, but only if the Commission are also satisfied that the damage is being caused by reason of the presence on the land in question of a significantly higher density of deer population than is usual in all the circumstances.

*Control agreements, control schemes and emergency measures: supplementary provisions*

**12 Power of Commission to provide services and equipment and to make certain payments**

- (1) The Commission may by agreement with any owner or occupier of land assist in or undertake, whether in pursuance of a control agreement, a control scheme or otherwise—
  - (a) the taking or killing of deer; and
  - (b) the disposal of deer or their carcasses.
- (2) An agreement under subsection (1) above may make provision for the providing of equipment by the Commission.
- (3) An agreement under subsection (1) above shall, unless the Commission with the approval of the Secretary of State otherwise decide, make provision for the payment of any expenses incurred by the Commission under the agreement.
- (4) The Commission may make in respect of the services of any person, who is not a member of staff of the Commission, authorised by them under section 10 of this Act such payment as may be agreed.

**13 Offences in relation to Part II**

- (1) Any person who refuses or wilfully fails to comply with any requirement laid upon him by a control scheme shall be guilty of an offence.
- (2) A person who wilfully obstructs any person acting in the execution of this Part of this Act or of any authorisation issued under this Part, other than an authorisation under subsection (6) or (7) of section 5 of this Act, shall be guilty of an offence.

**14 Limitation of criminal liability**

- (1) Subject to subsections (2) to (4) below, where a person performs an act at the request of or under the authority of the Commission in pursuance of—
  - (a) a control agreement;
  - (b) a control scheme; or
  - (c) section 10 of this Act,he shall not by reason of that act be liable to be proceeded against under this Act.
- (2) Where the act is performed by a member of the staff of the Commission in pursuance of section 10 of this Act, he shall be liable to be proceeded against if the act constitutes an offence under section 17(3) of this Act.
- (3) Where the act is performed by—
  - (a) a member of the staff of the Commission in pursuance of a control agreement or control scheme; or
  - (b) any other person in pursuance of a control agreement, a control scheme or section 10 of this Act,he shall be liable to be proceeded against if the act constitutes an offence under either section 17(3) or section 18(1) of this Act.

- (4) In subsections (2) and (3)(a) above, “member of the staff of the Commission” includes any person engaged by the Commission under a contract for services.

## **15 Power to enter on land**

- (1) For the purpose of the exercise of any of the functions of the Commission under section 10 of this Act, any person duly authorised in writing by the Commission shall have power at all reasonable times to enter upon any land.
- (2) A person authorised in writing by the Commission for the purposes mentioned in subsection (3) below shall have power at all reasonable times to enter upon any land where—
- (a) notice has been given to the owner and to the occupier of the land that it is proposed to enter during a period specified in the notice, not exceeding one month beginning at least fourteen days after the giving of the notice; and
  - (b) the exercise of that power takes place within the period so specified.
- (3) The purposes for which a person may be authorised by the Commission are—
- (a) the taking of a census of deer in any area in pursuance of their functions under section 1(1) of this Act;
  - (b) the determination of whether any of their functions under section 7 or 8 of this Act should be exercised;
  - (c) the exercise of any such function under the said section 7 or 8;
  - (d) the determination of how far and in what manner any requirement placed on any person by virtue of this Part of this Act has been complied with.
- (4) Any person who proposes to exercise any power of entry conferred by this section shall, if so required, produce the written document authorising him for such purpose.

## **16 Service of notices**

- (1) Subject to the provisions of this section, any notice for the purposes of this Act shall be in writing, and any notice or other document required or authorised by or under this Act to be given to or served on any person shall be duly given or served if it is delivered to him or left at his proper address or sent to him by post.
- (2) Any such notice or other document required or authorised to be served on any person for the purposes of this Act shall be duly served, if that person is an incorporated company or body, if it is served on the clerk or secretary of that company or body.
- (3) For the purposes of this section and section 7 of the Interpretation Act 1978, the proper address of any person on whom any such notice or document is to be served shall, in the case of the clerk or secretary of any incorporated company or body, be that of the registered or principal office of such company or body, and in any other case be the last known address of the person in question.
- (4) Where any notice or other document is to be given to or served on a person as being the person having any interest in land and it is not practicable after reasonable inquiry to ascertain his name or address, the notice or document may be given or served by addressing it to him by the description of the person having that interest in the land (naming it) and delivering the notice or document to some responsible person on the land or by affixing it, or a copy of it, to some conspicuous object on the land.



- (5) Nothing in this section shall require the Commission to give written notice of their intention to issue an authorisation in pursuance of section 10 of this Act.