



# Deer (Scotland) Act 1996

## 1996 CHAPTER 58

### PART IV

#### ENFORCEMENT, LICENSING OF VENISON DEALING AND MISCELLANEOUS PROVISIONS

##### *Enforcement*

#### **27 Powers of search and seizure**

- (1) A constable may seize any deer liable to be forfeited on conviction of an offence under this Act.
- (2) Where a sheriff or any justice of the peace is satisfied by information on oath that—
  - (a) there is reasonable ground to suspect a relevant offence to have been committed; and
  - (b) evidence of the commission of the offence is to be found on any premises or in any vehicle,he may grant a warrant authorising any constable at any time or times within one week of the date of such warrant to enter, if necessary by force, the said premises and every part thereof or the said vehicle for the purpose of detecting the offence.
- (3) A constable authorised by a warrant granted under subsection (2) above may—
  - (a) search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter the premises or, as the case may be, vehicle to which the warrant relates; and
  - (b) seize any article found on the premises, or in the vehicle, or on any such person which he has reasonable grounds for believing to be evidence of the commission of a relevant offence.
- (4) Where a constable has reasonable grounds to—
  - (a) suspect that—
    - (i) a relevant offence has been committed; and

- (ii) evidence of the commission of the offence is to be found in any vehicle; and
  - (b) believe that by reason of urgency or other good cause it is impracticable to apply for a warrant to search such a vehicle,
- he may stop and search that vehicle, and may exercise the same power of search and seizure in relation to it as might be conferred under subsection (2) above by a warrant of the sheriff or of a justice of the peace.
- (5) In subsections (2) to (4) above, a “relevant offence” is an offence under Part III, or under section 36(1) or (4), of this Act.
  - (6) No search of a female person shall be carried out in pursuance of any search authorised by this section except by a female person.

## **28 Power of arrest**

Where any person is found committing an offence under Part III of this Act, any constable may arrest that person.

## **29 Offences by bodies corporate**

Where an offence under this Act has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in such capacity, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## **30 Power of court on trial for one offence to convict of another**

If, upon a trial for an offence under any of sections 5, 17, 18, 19, 20, 21, 22 or 23 of this Act, or any rule of law relating to reset, the court is—

- (a) not satisfied that the accused is guilty of the offence charged, but
- (b) satisfied that he is guilty of another of those offences,

it may acquit him of the offence charged but find him guilty of the other offence and he shall then be liable to the same punishment as for that other offence.

## **31 Powers of court on conviction for offences**

- (1) Where a person is convicted of an offence under an enactment specified in column 1 and described in column 2 of the Table set out in Schedule 3 to this Act, he shall be liable—
  - (a) on summary conviction, to a penalty not exceeding the maximum penalty set out in column 3(a) of that Table in relation to that offence; and
  - (b) on conviction on indictment, to a penalty not exceeding the maximum set out in column 3(b) of that Table in relation to that offence.
- (2) Where a person is convicted of an offence under any of sections 17 to 23 of this Act, the court shall have power (in addition to any other power) to cancel any firearm or shotgun certificate held by him.
- (3) Where a court cancels a firearm or shotgun certificate under subsection (2) above—

- (a) the court shall cause notice in writing of that fact to be sent to the chief constable by whom the certificate was granted;
  - (b) the chief constable shall by notice in writing require the holder of the certificate to surrender it; and
  - (c) if the holder of the certificate fails to surrender the certificate within twenty one days from the date of that requirement, he shall be guilty of an offence.
- (4) Where a person is convicted of an offence under any of sections 5(5), 17(1), (2) or (3), 18(1), 20(1), 22 or 23(1) of this Act, he shall be liable to the forfeiture of any deer illegally taken, killed or removed by him or in his possession at the time of the offence.
- (5) Where a person is convicted of an offence under Part III or section 36 of this Act, the court shall have power to disqualify him from holding or obtaining a licence under section 33 of this Act.

### **32 Disposal of deer liable to forfeiture**

- (1) Where any deer seized under section 27(1) of this Act is liable to forfeiture the person by whom it is seized may sell it and the net proceeds of the sale shall be liable to forfeiture in the same manner as the deer sold.
- (2) A person shall not be subject to any liability on account of his neglect or failure to exercise the power conferred on him by subsection (1) above.

#### *Licensing of dealing in venison*

### **33 Licences to deal in venison**

- (1) A council may grant to any person whom they shall think fit a licence to deal in venison (which shall continue to be known as a “venison dealer’s licence”).
- (2) The Secretary of State shall have power by order to regulate—
- (a) applications for venison dealers' licences and the manner in which they are to be dealt with (including power to authorise councils to charge fees in respect of such applications); and
  - (b) the procedure—
    - (i) by which venison dealers' licences may be surrendered; and
    - (ii) for handing in of licences where a court has ordered their forfeiture or the holders have ceased to deal in venison.
- (3) The Secretary of State may in regulations under subsection (2) above apply any provision of Schedule 1 to the Civic Government (Scotland) Act 1982, as he thinks fit.
- (4) A venison dealer’s licence shall be valid for three years (unless the dealer has been disqualified from holding a licence by reason of his conviction of an offence under this Act), and may be renewed provided he is not at the time of the application subject to such disqualification.
- (5) Every council which grants a venison dealer’s licence shall cause to be sent to the Commission as soon as may be a copy of the licence.
- (6) Every council by whom venison dealers' licences are granted shall as soon as may be after the first day of January in each year make a return to the Commission of the

names and addresses of the persons who on that day held venison dealer's licences issued by the council.

- (7) In this section and sections 34 to 36 “venison” means the carcase or any edible part of the carcase of a deer, and “deer” means deer of any species, whether or not deer within the meaning of section 45 of this Act, and includes farmed deer.
- (8) In this section and section 36 of this Act “council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

### **34 Records kept by venison dealers**

- (1) Every licensed venison dealer shall keep a book in which shall be entered records in the prescribed form of all purchases and receipts of venison by him and shall enter in such book forthwith the prescribed particulars of such purchases and receipts.
- (2) Any person authorised in writing in that behalf by the Secretary of State or by the Commission (an “authorised person”) or any constable, may inspect any book kept in pursuance of subsection (1) above.
- (3) An authorised person shall show his written authority when so requested.
- (4) A licensed venison dealer shall produce for inspection by an authorised person or constable—
- (a) any book kept in pursuance of subsection (1) above;
  - (b) all invoices, consignment notes, receipts and other documents (including copies of them where the originals are not available) which may be required to verify any entry in such book; and
  - (c) all venison in his possession or under his control, or on premises or in vehicles under his control,
- and shall allow the authorised person or constable to take copies of such book or document or extracts therefrom.
- (5) Every book kept in pursuance of subsection (1) above shall be kept until the end of the period of three years beginning with the day on which the last entry was made in the book and any such documents as are mentioned in subsection (4)(b) above shall be kept for a period of three years beginning with the date of the entry to which they refer.
- (6) In this section “prescribed” means prescribed by order.

### **35 Reciprocal arrangements**

A licensed venison dealer who has purchased or received venison from another licensed venison dealer or from a licensed game dealer within the meaning of section 10(5) of the Deer Act 1991 shall be deemed to have complied with the requirements of section 34 of this Act if he has recorded in his book kept in pursuance of subsection (1) of that section—

- (a) that the venison was so purchased or received;
- (b) the name and address of the other licensed venison dealer or of the licensed game dealer;
- (c) the date when the venison was so purchased or received;
- (d) the number of carcasses and sex of the venison; and
- (e) the species of deer, provided that it is possible to identify it.

### **36 Offences in connection with venison dealing**

- (1) Subject to subsection (2) below, any person who—
  - (a) sells, offers or exposes for sale; or
  - (b) has in his possession, transports or causes to be transported for the purpose of sale at any premises,any venison shall be guilty of an offence.
- (2) A person is not guilty of an offence under subsection (1) above if—
  - (a) he is a licensed venison dealer; or
  - (b) he does the act constituting the offence for the purpose of selling to a licensed venison dealer; or
  - (c) he has purchased the venison from a licensed venison dealer.
- (3) In subsection (2) above “licensed venison dealer” means the holder of a venison dealer’s licence granted by the council within whose area the sale, offer or exposure for sale takes place, or where the premises concerned are situated.
- (4) Any person who—
  - (a) sells, offers or exposes for sale;
  - (b) has in his possession for the purpose of sale at any premises;
  - (c) transports for the purpose of sale; or
  - (d) purchases or offers to purchase or receives,the carcass of a deer, or any part of such a carcass, which he knows or has reason to believe has been killed unlawfully shall be guilty of an offence.
- (5) Any licensed venison dealer who fails to comply with any provision of section 34 of this Act or who knowingly or recklessly makes in any book or document he is required to keep under that section an entry which is false or misleading in any material particular shall be guilty of an offence.
- (6) Any person who obstructs an authorised person or a constable making an inspection under section 34 of this Act shall be guilty of an offence.
- (7) In this section “sale” includes barter, exchange and other transactions by which venison is disposed of for value.

#### *Further powers of the Commission*

### **37 Restrictions on granting of certain authorisations**

- (1) The Commission shall not grant an authorisation under any of sections 5(6) or (7), 18(2) or 19(2) of this Act (in subsections (2) to (5) below referred to as an “authorisation”) unless they are satisfied that the person concerned is a fit and competent person to receive an authorisation under that provision.
- (2) An authorisation shall—
  - (a) be in writing; and
  - (b) specify the duration of its validity.
- (3) No authorisation shall be granted under section 18(2) or 19(2) of this Act unless a relevant code of practice has been published under subsection (5) below, and any such

authorisation shall contain a condition that the person concerned shall comply with the relevant provisions of any such code.

- (4) An authorisation may contain such conditions, other than that mentioned in subsection (3) above, as the Commission think fit.
- (5) The Commission shall prepare and publish, and from time to time revise, a code of practice for—
- (a) night shooting; and
  - (b) the use of vehicles for the purposes of deer management, within the meaning of section 19(2) of this Act,
- to which they shall have regard when exercising their power under section 18(2) or, as the case may be, section 19(2) of this Act.

### **38 Limitation on requirement to obtain game licence**

Any person authorised or required by the Commission to kill any deer under this Act shall not be required to obtain for that purpose a licence to kill game.

### **39 Deer killed under the authority of the Commission**

Without prejudice to sections 8(8), 9, 10(10) and 12(1) of this Act, the Commission shall have no power to dispose of deer taken or killed under their authority.

### **40 Power of Commission to require return of number of deer killed**

- (1) The Commission may, for the purposes of any of their functions, by notice served on the owner or occupier of any land require him to make a return, in such form as the Commission may require, showing the number of deer of each species and of each sex which to his knowledge have been taken or killed on the land.
- (2) A notice served under subsection (1) above shall—
- (a) be in writing;
  - (b) specify a period, immediately preceding the date of service of the notice, for which the return must be completed.
- (3) A period specified by virtue of subsection (2)(b) above shall not exceed five years.
- (4) Any person on whom a notice under subsection (1) above has been served who—
- (a) fails without reasonable cause to make the required return within thirty-six days after the service of the notice; or
  - (b) in making the return knowingly or recklessly furnishes any information which is false in a material particular,
- shall be guilty of an offence.

### *Miscellaneous and general provisions*

### **41 Savings for certain rights**

- (1) Nothing in Parts I or II (except section 5) of this Act or anything done thereunder shall preclude any occupier of any land from recovering any compensation for damage

caused by deer which he would have been entitled to recover if this Act had not been passed.

- (2) Nothing in sections 18(1), 19(1) or 20(1)(a) of this Act shall be construed as prohibiting—
- (a) a person having a legal right to take deer on any land; or
  - (b) a person having permission in writing from any such person as is mentioned in paragraph (a) above,
- from taking a deer on that land in any manner which does not cause it unnecessary suffering.

#### **42 Information to be supplied to owner of certain land**

The occupier of any agricultural land or enclosed or unenclosed woodland shall supply, as soon as practicable after being requested to do so by the owner of the land, information to the owner as to the number, sex and species of deer taken or killed by him or by any other person, other than the owner or his employees, authorised or nominated by him under or by virtue of section 5(6), 18(2) or 26(2) of this Act within the period of twelve months immediately preceding the request.

#### **43 Application of Act to farmed deer**

- (1) Subject to subsections (2) to (4) below, this Act does not apply in respect of farmed deer.
- (2) The following provisions of this Act apply as respects farmed deer—
- (a) subsections (3) and (4) of section 17;
  - (b) section 21;
  - (c) sections 33 to 36;
  - (d) section 45.
- (3) The provisions of sections 24 and 27 to 32 of this Act shall apply in respect of an offence committed by virtue of subsection (2) above.
- (4) In this section “farmed deer” means deer of any species which are on agricultural land enclosed by a deer-proof barrier and are kept on that land by any person as livestock.

#### **44 Application of Act to the Crown**

- (1) This Act shall apply, subject to such modifications as may be prescribed, to land an interest in which belongs to Her Majesty in right of the Crown and land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.
- (2) In subsection (1) above, “prescribed” means prescribed in regulations made by the Secretary of State under this Act.

#### **45 Interpretation**

- (1) In this Act, unless the context otherwise requires—
- “agricultural land” has the meaning given by the Agricultural Holdings (Scotland) Act 1991;

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*Status: This is the original version (as it was originally enacted).*

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“ammunition” and “firearm” have the meanings respectively given in the Firearms Act 1968;

“animal foodstuffs”, for the purposes of sections 18(2) and 26 of this Act, includes foodstuffs intended for consumption by farmed deer;

“control agreement” has the meaning given by section 7 of this Act;

“control area” has the meaning given by section 6 of this Act;

“control scheme” has the meaning given by section 8 of this Act;

“deer” means fallow deer, red deer, roe deer and sika deer and any other species of deer specified in an order made under subsection (2) below and includes any hybrid of those species and, where appropriate, the carcase of any deer or any part of it;

“deer management” includes the management of deer for sporting purposes;

“deer proof barrier” means a barrier which will, having regard to the character and nature of the land, prevent the entry of deer on to or, as the case may be, the escape of deer from any land;

“enclosed” means enclosed by a stock-proof fence or other barrier, and “unenclosed” shall be construed accordingly;

“fallow deer” means deer of the species *Dama dama*;

“farmed deer” has the meaning given in section 43 of this Act;

“functions” includes powers and duties;

“land” does not include a dwelling house or any yard, garden, outhouses and pertinents belonging thereto or usually enjoyed therewith;

“livestock” has the meaning given by the Agriculture (Miscellaneous Provisions) Act 1968 and, for the purposes of sections 7, 8 and 10 of this Act, includes farmed deer;

“natural heritage” includes flora and fauna, geological and physiographical features and the natural beauty and amenity of the countryside;

“occupier” in relation to any land includes any tenant or sub-tenant, whether in actual occupation of the land or not;

“owner” in relation to any land includes any person who under the Land Clauses Acts would be enabled to sell and convey the land to promoters of an undertaking;

“red deer” means deer of the species *Cervus elaphus*;

“roe deer” means deer of the species *Capreolus capreolus*;

“sika deer” means deer of the species *Cervus nippon*;

“species” includes any hybrid of different species of deer;

“take”, in relation to deer, means take alive, and cognate expressions shall be construed accordingly;

“vehicle” includes an aircraft, hovercraft or boat; and

“woodland” means land on which trees are grown, whether or not commercially, and includes any such trees and any vegetation planted or growing naturally among such trees on that land.

- (2) The Secretary of State may, by order, specify other species of deer which are to be “deer” for the purposes of subsection (1) above.



**46 Financial provisions**

The expenses of the Commission shall be defrayed by the Secretary of State, and any sums received by them shall be paid to the Secretary of State.

**47 Orders, regulations etc**

- (1) Subject to section 21(4) of this Act, any order or regulations made under this Act shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution by either House of Parliament.
- (2) Any order made under this Act may be varied or revoked by a subsequent order made in the like manner.

**48 Short title, consequential amendments, repeals, extent and commencement**

- (1) This Act may be cited as the Deer (Scotland) Act 1996.
- (2) Schedule 4 (which makes provisions consequential on this Act) and Schedule 5 (which repeals provisions consolidated by this Act) shall have effect.
- (3) Subject to subsection (4) below, this Act shall extend to Scotland only.
- (4) The amendments contained in Schedule 4 and the repeals contained in Schedule 5 have the same extent as the enactments therein amended or, as the case may be, repealed.
- (5) Schedule 6 (which contains transitional and transitory provisions and a saving) shall have effect.
- (6) This Act shall come into force at the expiry of the period of one month beginning with the date on which the Deer (Amendment)(Scotland) Act 1996 comes into force.