



# Agriculture (Scotland) Act 1948

## 1948 CHAPTER 45

### PART III

#### CONTROL OF INJURIOUS ANIMALS, BIRDS AND WEEDS.

##### *Prevention of damage by injurious animals and birds.*

#### **39 Control of injurious animals and birds.**

(1) If it appears to the Secretary of State that it is expedient so to do for the purpose of preventing damage to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks or any works on land, he may by notice in writing served on any person having the right so to do require that person to take, within such time as may be specified in the notice, such steps as may be so specified for the killing, taking or destruction on land so specified of such animals or birds to which this section applies as may be so specified or the eggs of such birds.

(2) A requirement shall not be imposed under the last foregoing subsection if apart from this subsection the killing, taking or destruction in question would be prohibited by law:

Provided that a requirement may be so imposed to kill or destroy game within the meaning of the Game (Scotland) Act, 1772, at a time of year at which apart from this proviso the killing or destruction would be prohibited by section one of that Act; and for the purposes of the last foregoing subsection a person shall not be deemed not to have the right to comply with a requirement falling within this proviso by reason only that apart from this proviso compliance therewith would be prohibited as aforesaid.

(3) The animals to which this section applies are rabbits, hares and other rodents, deer, foxes and moles, and the birds to which this section applies are, in relation to any area, wild birds other than those the killing or taking of which is for the time being prohibited in that area by the Wild Birds Protection Acts, 1880 to 1939, or by any order made by the Secretary of State under those Acts; and this section shall apply to such other animals as may be prescribed:

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Provided that regulations under this subsection may provide that for the purposes of section forty-nine of this Act any such other animals specified in the regulations shall not be treated as animals to which this section applies.

- (4) The Secretary of State may with the approval of the Treasury make contributions towards the expenses incurred or to be incurred by any person or body of persons in killing, taking or destroying animals or birds to which this section applies or the eggs of such birds.

#### **40 Prevention of escape of captive animals.**

If it appears to the Secretary of State that, for the purpose of preventing such damage as is mentioned in the last foregoing section, it is expedient to prevent the escape of any animals from land on which they are kept in captivity, the Secretary of State may by notice in writing served on the occupier of the land require him to take within such time as may be specified in the notice such steps to prevent the escape thereof, as may be specified in the notice.

#### **41 Supplementary provisions as to s. 39 and s. 40.**

- (1) If any person fails to comply with a requirement imposed under either of the two last foregoing sections, he shall be liable on summary conviction to a fine not exceeding twenty-five pounds, and to a further fine not exceeding five pounds for each day after conviction on which the failure continues.
- (2) Without prejudice to any proceedings under the last foregoing subsection, where a requirement imposed under either of the two last foregoing sections has not been complied with, any person authorised by the Secretary of State in that behalf may at any time enter on the land to which the requirement relates and take such steps as the Secretary of State may direct to secure compliance with the requirement; and the reasonable cost of taking such steps shall be recoverable by the Secretary of State from the person on whom the requirement was imposed. Any question arising under this subsection as to what is the reasonable cost of taking any such steps as aforesaid shall be determined, in default of agreement, by the Land Court.
- (3) The Secretary of State may give such directions as appear to him to be expedient authorising the keeping of animals, birds, or eggs killed or taken in pursuance of section thirty-nine of this Act or this section and requiring or authorising the disposal of such animals, birds or eggs, whether for the purpose of being used as food or otherwise.
- (4) Where a person incurs any expense reasonably necessary for the purpose of complying with any requirement imposed on him under either of the two last foregoing sections, or where any cost is recovered from a person under subsection (2) of this section, then if he alleges that the expense or cost ought to be borne wholly or in part by some other person having an interest in the land to which the requirement in question relates, he may apply to the Land Court who may make such order for securing that the applicant is wholly or in part indemnified by that other person in respect of the said expense or cost as they consider just and equitable in the circumstances of the case.
- (5) Without prejudice to the general provisions of Part VII of this Act as to the service of notices, any notice to be served -under either of the two last foregoing sections on the owner or the occupier of land used for agriculture shall, where an agent or servant of

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the owner or the occupier is responsible for the control of the farming of the land, be duly served if served on the said agent or servant.

#### **42 Provision by Secretary of State of equipment and services for pest control.**

- (1) The Secretary of State may, for the purpose of assisting in the killing, taking or disposal of animals or birds to which section thirty-nine of this Act applies, and the eggs of such birds, provide or make contributions towards the provision of such services and equipment, appliances and other material as appear to him to be requisite for that purpose.
- (2) The Secretary of State may make such reasonable charges, if any, as he thinks fit in respect of any assistance rendered under the last foregoing subsection, and may recover the amount of any such charge from the person at whose request the assistance was rendered.

#### *Prevention of Damage by Deer.*

#### **43 Right of occupier of agricultural holding to kill deer.**

- (1) The occupier of an agricultural holding or of enclosed woodlands and any person authorised by him in writing shall be entitled, notwithstanding anything in any contract or agreement between such occupier and his landlord, to kill and take, and to sell or otherwise dispose of the carcasses of, any deer found on any arable land, garden grounds or land laid down in permanent grass (other than moorland and unenclosed land) forming part of the holding, or on such woodlands, as the case may be.
- (2) A right conferred by or in pursuance of the foregoing subsection shall not be exercised between one hour after sunset and one hour before sunrise.

#### **44 Powers of Secretary of State to reduce number of deer.**

- (1) Without prejudice to the powers conferred on him by the foregoing provisions of this Part of this Act, the Secretary of State shall, after considering any complaint made to him concerning damage caused on any land by deer to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks or any works on that land, and after affording to the occupier and the owner of the land and any other person appearing to the Secretary of State to have an interest an opportunity of making representations to the Secretary of State whether in writing or on being heard by a person appointed by the Secretary of State, have power to do, if he should think fit, either or both of the following things, that is to say—
  - (a) to authorise in writing the occupier of any agricultural holding forming part of the land and such number of persons authorised by the occupier in writing as the Secretary of State may determine, notwithstanding anything in any contract or agreement between such occupier and his landlord, to kill, during such period and subject to such conditions (including conditions as to the removal and sale of the carcasses of deer killed) as the Secretary of State may determine, deer found on any moorland or unenclosed land forming part of the holding; or
  - (b) to authorise in writing any person to enter on the land of any owner who has failed to take reasonable steps to control the number of deer on his land, and to kill on such land, during such period and subject to such conditions (including

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conditions as to the removal and sale of the carcasses of deer killed) as the Secretary of State may determine, such number of deer of either sex as the Secretary of State may think necessary.

- (2) A right conferred in pursuance of paragraph (a) of the last foregoing subsection on the occupier of an agricultural holding and persons authorised by him shall not be exercised—
- (a) at any time between the tenth day of April and the sixteenth day of October in any year; or
  - (b) between one hour after sunset and one hour before sunrise.
- (3) A person authorised under paragraph (b) of subsection (1) of this section shall not be entitled to enter on the land at any time between the tenth day of April and the sixteenth day of October in any year, and shall, before entering on any land for the purpose of killing deer thereon, give to the owner and, any tenant thereof not less than ten days' notice of his intention to do so, and shall allow such owner or tenant, if they so desire, an opportunity of assisting in any operations undertaken for the purpose of reducing the number of deer on such land.
- (4) Before authorising any person in pursuance of paragraph (a) of subsection (1) of this section, the occupier shall give notice in writing to the Secretary of State and to his landlord of the name of the person proposed to be so authorised and shall at the same time certify that that person is experienced in the use of firearms; and the occupier shall not authorise that person until the approval in writing of the Secretary of State has been given.
- (5) The Secretary of State may at any time by notice in writing given to the occupier of an agricultural holding withdraw any authorisation granted to him under paragraph (a) of subsection (1) of this Section or vary any condition attached to such authorisation with respect to the periods during which the right may be exercised, the number of persons who may be authorised by the occupier, or the number of deer of each sex that may be killed.
- (6) The Secretary of State may at any time by notice in writing given to the person in respect of whom approval has been given by him under subsection (4) of this section withdraw that approval; and on such approval being so withdrawn that person shall be deemed to have ceased to be authorised by the occupier.
- (7) The Secretary of State shall give notice in writing to the landlord concerned of the granting or the withdrawal of, or of the variation of any condition attached to, any authorisation under paragraph (a) of subsection (1) of this section and of the giving of any approval under subsection (4) of this section, and shall give notice-in writing to the occupier and the landlord concerned of the withdrawal under the last foregoing subsection of any approval.

#### **45 Recovery of expenses of killing deer.**

- (1) When an authority granted by the Secretary of State under paragraph (b) of subsection (1) of the last foregoing section for the killing of deer on any land includes authority to sell the carcasses of the deer killed, the expenses incurred in carrying out the operations so authorised shall be defrayed in the first instance from the proceeds of the sale of the carcasses, and if the said expenses are greater than the said proceeds, the difference shall be recoverable from the owner of the land by the Secretary of

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State, and if less, the difference shall be recoverable from the Secretary of State by the owner of the land.

- (2) When such authority does not include authority to sell the carcasses, the carcasses shall be deemed to be the property of the owner of the land, and the expenses, or such proportion thereof as the Secretary of State may think equitable, incurred in carrying out the operations so authorised shall be recoverable by the Secretary of State from the owner of the land.
- (3) Where the land belongs to two or more owners the difference between the expenses and the "proceeds as ascertained under subsection (1) of this section, or the expenses or the proportion thereof as ascertained under subsection (2) of this section, shall be recoverable by or recoverable from, as the case may require, those owners' in such proportions as the Secretary of State may allocate, and in making such allocation the Secretary of State shall take into account any services rendered by any owner in connection with the carrying out of operations on his land.
- (4) The Secretary of State shall furnish to each owner a statement showing the expenses incurred in carrying out the operations authorised as aforesaid, the amount, if any, received in respect of the sale of the carcasses and the amount recoverable by or recoverable from each owner under this section ; and any owner who is aggrieved by such statement or any part thereof may, within one month after such statement has been furnished to him, appeal, to the Land Court who may, if it appears to them equitable so to do, vary the amount recoverable by or recoverable from the owner, as the case may be.

#### **46 Returns of numbers etc. of deer.**

- (1) The Secretary of State may .by notice in writing served on the owner of any land require him to make a return in such form as the Secretary of State may require showing the number of deer of each sex which to his knowledge have been killed on the land during such period (not exceeding- five years) immediately preceding the service of the-notice as may be specified therein, and also a return showing the number of deer of each sex which he estimates to be on the land.
- (2) If any person on whom a notice under the foregoing subsection has been served—
  - (a) fails or neglects to make the required return within thirty-six days after the service of the notice, of
  - (b) in making such a return as aforesaid knowingly or recklessly furnishes any information which is false in a material particular,he shall be liable on summary conviction to a fine not exceeding fifty pounds.

#### **47 Entry on and inspection of lands.**

Notwithstanding the provisions of section eighty-two of this Act, the powers of entry and inspection thereby conferred shall not, during the period beginning on the first day of August and ending on the fifteenth day of October, be exercisable in relation to land occupied and used as a deer forest for the purpose of determining whether, and if so in what manner, any of the powers conferred on the Secretary of State under this Part of this Act are to be exercised.

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*Amendments of Law relating to Killing of Hares and Rabbits.*

**48 Amendment of 43 and 44 Vict. c. 47, s.1.**

(1) Paragraph (3) of the proviso to section one of the Ground Game Act, 1880 (which paragraph restricts the exercise of the rights conferred by the section on the occupiers of certain lands to kill and take ground game otherwise than by the use of firearms to the period from the first day of September to the thirty-first day of March, and as regards killing and taking with firearms to the period from the eleventh day of December to the thirty-first day of March), shall cease to apply as regards killing and taking otherwise than by the use of firearms, and shall, as regards killing and taking with firearms, have effect as if for the words "eleventh day of December " the words " first day of July " were substituted.

(2) The Secretary of State may, on the application of an occupier of land, and after affording to the landlord thereof an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, sanction the authorisation by such occupier of such number of persons .to kill and take ground game on the land in addition to any person so authorised in pursuance of section one of the Ground Game Act, 1880, as the Secretary of State may, having regard to the extent of the land, think reasonable; and the provisions of the said section one with regard to the production by persons authorised by the occupier of the documents by which they are so authorised shall apply to any person authorised in pursuance of any such sanction as aforesaid in like manner as those provisions apply to persons authorised in pursuance of that section. The occupier shall on authorising any person in pursuance of this subsection, forthwith give notice in writing to the landlord of the name of that person:

Provided that the number of persons who may be authorised as aforesaid shall not be increased without an opportunity being given to the landlord of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State.

(3) The Secretary of State may at any time—  
 (a) require an occupier to withdraw any authorisation, or  
 (b) recall or vary any sanction,  
 granted under the last foregoing subsection.

(4) Section three of the Ground Game Act, 1880, shall not apply to prevent the occupier of land and the owner of such land or any other person having a right to kill and take game thereon from making and enforcing agreements for the joint exercise, or the exercise for their joint benefit, of the right to kill and take ground game otherwise than by the use of firearms:

Provided that this subsection shall not apply in relation to any such agreement as aforesaid which was made after the commencement of this section and to which the tenant of a holding within the meaning of the Agricultural Holdings (Scotland) Acts, 1923 to 1948, is a party, unless the agreement was made after the lease under which the tenant holds the land was entered into.

(5) The Ground Game (Amendment) Act, 1906, shall cease to have effect.

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**49 Provision as to use of poisonous substances.**

A person shall not be guilty of an offence under section seven of the Protection of Animals (Scotland) Act, 1912, by reason only that he uses poisonous gas, or places a substance which, by evaporation or in contact with moisture, generates poisonous gas, in any hole, burrow or earth for the purpose of killing animals to which section thirty-nine of this Act applies.

**50 Prohibition of night shooting and use of spring traps.**

(1) If any person—

- (a) between the expiration of the first hour after sunset and the commencement of the last hour before sunrise, uses a firearm for the purpose of killing hares or rabbits; or
- (b) uses or knowingly permits the use for that purpose of a spring trap other than a spring trap of a type and make for the time being approved by the Secretary of State;

he shall be liable on summary conviction to a fine not exceeding twenty pounds or, in the case of a second or subsequent conviction under this section, to a fine not exceeding fifty pounds:

Provided that it shall be a defence for a person charged with the offence mentioned in paragraph (b) of this subsection to prove that the trap was used under an authority granted by the Secretary of State and that it was used in a rabbit hole.

(2) The Secretary of State may from time to time by order authorise the use for the purpose aforesaid of spring traps other than traps of a type and make approved by him, and such authority may be granted as respects all land in Scotland, or as respects the land in any county or any part of a county, or as respects any particular land or class of land, as may be specified in the order:

Provided that when the Secretary of State is satisfied that there are available in sufficient quantities spring traps of a type and make approved by him he may by regulation withdraw all authorities granted by him under this subsection; and after such regulation has been made it shall not be lawful for the Secretary of State, unless such regulation is revoked under subsection (1) of section five of the Statutory Instruments Act, 1946, to authorise the use of spring traps other than traps of a type and make approved by him.

(3) Section six of the Ground Game Act, 1880 (which relates to night shooting and the use of spring traps above ground or of poison for the purpose of killing hares or rabbits), shall cease to have effect.

*Injurious Weeds.*

**51 Destruction of injurious weeds.**

The Schedule to the Corn Production Acts (Repeal) Act, 1921 (which contains provisions for securing the destruction of injurious weeds specified in paragraph (8) thereof) shall have effect, in its application to Scotland, as if there were specified in the said paragraph (8) such additional injurious weeds as the Secretary of State may by regulations under this section prescribe.

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*Supplementary.*

**52 Saving of right to compensation for damage by game.**

Nothing in this Part of this Act or anything done there- under shall preclude the occupier of an agricultural holding from recovering any compensation for damage by game which he would have been entitled to recover if this Act had not passed.

**53 Persons acting under this Part of this Act not required to obtain game licences.**

A person authorised or required to kill or to take any animal or bird under the provisions of this Part of this Act shall not be required to obtain for that purpose a licence to kill game, and shall have the like power of selling any such animal or bird in pursuance of any such authorisation or requirement as if he had such a licence; but nothing in this Part of this Act shall exempt any person from the provisions of the Gun Licence Act, 1870.

**54 Interpretation of Part III.**

In this Part of this Act, the following expressions have, unless the context otherwise requires, the meanings hereby respectively assigned to them, that is to say—

" deer " includes deer of any species;

" occupier of an agricultural holding " includes the tenant of a holding within the meaning of the Agricultural Holdings (Scotland) Acts, 1923 to 1948, and a landholder and a statutory small tenant within the meaning of the Small Landholders (Scotland) Acts, 1886 to 1931;

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

" woodlands " includes forests of trees and plantations.