



Game (Scotland) Act 1772

1772 CHAPTER 54 13 Geo 3

An Act for the more effectual Preservation of the Game in . . .
F1

Scotland; and for repealing and amending several of the Laws now in being relative thereto.

Preamble.

Whereas the Laws already made for the Preservation of game in . . . F2 Scotland, are found by experience to be insufficient for that purpose, without being altered and amended:

Textual Amendments

- F1 Words repealed by [Statute Law Revision Act 1948 \(c. 62\), s. 4\(b\)](#)
F2 Words repealed by [Statute Law Revision Act 1948 \(c. 62\), s. 4\(b\)](#)

Modifications etc. (not altering text)

- C1 Short title “The Game (Scotland) Act 1772” given by [Short Titles Act 1896 \(c. 14\)](#)
C2 Act repealed so far as it relates to the wilfully taking, killing, destroying, carrying, selling, buying, having or using any partridge before the first day of September in any year by the Act 36 Geo. 3 c. 54, s. 1
C3 Act amended by [Game Laws \(Amendment\) \(Scotland\) Act 1877 \(c. 28, SIF 4:3\), s. 10](#)
C4 Certain words of enactment and other words repealed by [Statute Law Revision Act 1888 \(c. 3\)](#) and remaining words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3](#)

[1.] Taking, &c. Muir Fowl, &c. between Dec. 10. and Aug. 12. Penalty.

Every person who shall wilfully take, kill, destroy, carry, sell, buy or have in his or her possession, or use any muir fowl or tarmargan, between the tenth day of December and the twelfth day of August in any year; or any heath fowl, between the tenth day of December and the twentieth day of August in any year; or any partridge between the first day of February and the first day of September in any year; or any pheasant between the first day of February and the first day of October in any year, shall, for every bird so taken, killed, destroyed, carried, sold, bought, found or used, forfeit and

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pay [^{F3}level 1 on the standard scale]; and in case of not paying the sum decreed within the space of ten days after conviction by a final sentence, shall suffer imprisonment for two months for each five pounds sterling thereof.

Textual Amendments

- F3** Words “the sum of five £sterling” substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G, 457A**

Modifications etc. (not altering text)

- C5** [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 407(3)** (periods of imprisonment) apply in relation to non-payment of certain sums imposed under a statute passed before 1.6.1909

2 Proviso for pheasants, &c.

Provided always, that nothing in this Act shall extend to any pheasant or partridge which shall be taken in the seasons allowed by this Act, and kept in any mew or breeding place.

3 Persons not qualified having game in custody. First Offence. Subsequent Offence.

And every person whatsoever, not qualified to kill game in Scotland, who shall have in his or her custody, or carry at any time of the year, upon any pretence whatsoever, any hares, partridges, pheasants, muir fowl, tarmagans, heath fowl, snipes . . . ^{F4} without the leave or order of a person qualified to kill game in Scotland, for carrying such hares or other game, or for having the same in his or her custody, shall, for the first offences forfeit and pay [^{F5}level 1 on the standard scale]; and for the second and every other subsequent offence [^{F5}level 1 on the standard scale]; and in case of not paying the sum decreed within the space of ten days after conviction by a final judgement, shall suffer imprisonment for six weeks for the first offence, and for three months for the second and every other subsequent offence.

Textual Amendments

- F4** Words repealed by [Protection of Birds Act 1954 \(c. 30\)](#), **Sch. 6**
- F5** Words “the sum of twenty shillings” and “the sum of forty shillings” substituted (S.) by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289E–289G, 457A**

Modifications etc. (not altering text)

- C6** [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s.289E** (in relation to liability on first and subsequent convictions), applies (S.)

4—7 ^{F6}

Textual Amendments

- F6** **Ss. 4—7** repealed by [Heather Burning \(Scotland\) Act 1926 \(c. 30\)](#), **s. 4**

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8 Offences determined by justices, &c.

And all offences against this Act shall and may be enquired into and determined, either by the oath or oaths of one or more credible witness or witnesses, or by the confession or oaths of the parties accused, before any two or more of His Majesty's justices of the peace, or before the sheriff or steward-depute or substitute of the county where the offence shall be committed, or where the offender shall be found; and all prosecutions for offences against this Act shall be carried on either at the instance of the fiscal of the court in which the prosecution is brought, or of any other person who will inform or complain.

9 Penalties within ten days. Distress.Imprisonment.

And if any person convicted of any of the offences against this Act shall not pay the penalty or forfeiture decreed against him or her, within the space of ten days from and after a final judgement of conviction, it shall and may be lawful for the justices of the peace, sheriff or steward-depute or substitute before whom the information, complaint or action may have been brought, upon the application of the prosecutor, to grant warrant for levying the penalties or forfeitures by immediate distress and sale of the offender's goods and moveables, together with the costs and charges attending the levying thereof, returning the overplus, if any be, to the owner; or to grant warrant for committing the offender to the common gaol of the county for the time specified in this Act, as satisfaction for the penalty or forfeiture incurred, or until payment; and in case a warrant for levying the penalty by distress and sale of the offender's goods and moveables shall be first applied for and obtained, and that the penalty or forfeiture shall not be recovered in consequence thereof, it shall and may be lawful for the justices of peace, sheriff or steward-depute or substitute, who granted the warrant for levying the penalty of forfeiture by distress and sale of the offender's goods and moveables upon its being certified to him or them by the officer employed in executing the warrant, either that he has been able to recover no part of the penalty or forfeiture, or that a certain part, to be certified by him still remains unrecovered, to grant warrant for committing the offender to the common gaol of the county for the time specified in this Act, as satisfaction for the penalty or forfeiture incurred, or until complete payment shall be made of the penalty or forfeiture incurred and decreed.

10 Penalties how applied.

And one moiety of the penalties or forfeitures to be incurred for any offence against this Act, shall, when recovered, be paid to the prosecutor, and the other moiety shall be applied . . . ^{F7} to the repairing of the high roads within the parish where the offence shall be committed, . . . ^{F7}

Textual Amendments

F7 Words repealed by [S.I. 1952/1334](#) (1952 II, p. 2029)

11 Appeal

Provided always that it shall and may be lawful to or for any person conceiving himself or herself aggrieved by any decree of the justices of the peace, or sheriff, or steward-depute, or substitute, in such prosecutions, to complain and seek relief by appeal to the next circuit court of justiciary of the circuit wherein the county is where the

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decree is pronounced; or where there are no circuit courts, to the Court of Justiciary at Edinburgh, by taking and entering an appeal in open court at the time of pronouncing such decree, or at any time thereafter within ten days, by lodging the same in the hands of the clerk of the court, and serving the adverse party with a duplicate thereof personally, or at his dwelling house, or his procurator or agent in the cause; and such service shall be sufficient summons to oblige the prosecutor to attend and answer at the next circuit court which shall happen to be held, at least fifteen days after service, or at the first court of justiciary which shall be held at Edinburgh, in the case where there are no circuit courts, at least fifteen days after such service; and thereupon the judge or judges at such circuit court, or in the Court of Justiciary at Edinburgh, shall and may proceed to cognosce, hear and determine; and in case they shall find the reasons of any such appeal not relevant or not instructed, or shall determine against the party appealing, the judge or judges shall condemn the appellant in such costs of suit as shall appear to be just and reasonable, and the decree to pronounced shall be final and conclusive to the parties.

12 Bond

Provided also that when an appeal is taken, the appellant at the time of entering his or her appeal, shall lodge with the clerk of the court from which the appeal is taken, a bond, with a sufficient cautioner, for paying the sum or sums contained in the decree appealed against, so far as affirmed and approved of by the judgement upon the appeal, and for paying the costs of suit, if any shall be awarded; and the clerk of court shall be answerable for the sufficiency of such cautioner.

13 In what case Proceedings laid before Justiciary Court at Edinburgh.

Provided likewise, that in case any circuit court shall, on hearing any such appeal, find any such difficulty to arise, that by means thereof such circuit court cannot proceed to the determination of the same consistently with justice and the nature of the case; in any such case, and not otherwise, it shall and may be lawful to and for such circuit court to certify such appeal, together with the reasons of such difficulty, and the proceedings thereupon had before such circuit court, to the Court of Justiciary at Edinburgh, which is hereby authorised and required to proceed in and determine the same.

14 Limitation of prosecution.

Provided always, that no penalty or forfeiture in this Act shall be recovered unless the prosecution for recovering thereof shall be commenced within six months after the offence committed.

15 F8

Textual Amendments

F8 S. 15 repealed by [Statute Law Revision Act 1887 \(c. 59\)](#)

16 F9

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Textual Amendments

F9 [S. 16](#) repealed by [Statute Law Revision Act 1871 \(c. 116\)](#)

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