



Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

PART 3

DEER

26 Deer management etc.

- (1) The 1996 Act is amended as follows.
- (2) In section 1 (SNH's deer functions)—
 - (a) in subsection (1)(a), for “conservation,” substitute “conservation of deer native to Scotland, the”,
 - (b) in subsection (2)—
 - (i) the word “and” immediately after paragraph (b) is repealed,
 - (ii) after paragraph (c) insert—
 - “(d) the interests of public safety; and
 - (e) the need to manage the deer population in urban and peri-urban areas.”.
- (3) In section 3 (power of SNH to facilitate exercise of functions)—
 - (a) in subsection (1)—
 - (i) the word “and” immediately after paragraph (a) is repealed,
 - (ii) after paragraph (b) insert “; and
 - (c) to assist any person or organisation in reaching agreements with third parties.”,
 - (b) after subsection (2) insert—

“(3) A public body or office-holder issued guidance or advice under subsection (1)(a) must have regard to such guidance or advice in exercising any functions to which the guidance relates.”.
- (4) In section 4(1) (appointment of panels), the words “, not exceeding nine,” are repealed.
- (5) In section 18(2) (taking or killing at night), for paragraph (a) substitute—

- “(a) the taking or killing is necessary—
- (i) to prevent damage to crops, pasture, human or animal foodstuffs, or to woodland; or
 - (ii) in the interests of public safety; and”.

27 Deer management code of practice

- (1) After section 5 of the 1996 Act insert—

“Code of practice on deer management

5A Code of practice on deer management

- (1) SNH must draw up a code of practice for the purpose of providing practical guidance in respect of deer management.
- (2) The code of practice may, in particular—
 - (a) recommend practice for sustainable deer management;
 - (b) make provision about collaboration in deer management;
 - (c) set out examples of circumstances in which SNH may seek to secure a control agreement or make a control scheme;
 - (d) make different provision for different cases and, in particular, for different circumstances, different times of the year or different areas.
- (3) SNH must from time to time review the code of practice.
- (4) SNH may replace or revise the code of practice.
- (5) Before drawing up, replacing or revising the code, SNH must consult any person appearing to them to have an interest in the code.
- (6) SNH must submit a proposed code of practice (or a proposed replacement or revision) to the Scottish Ministers and, on receiving it, the Scottish Ministers may—
 - (a) approve it, with or without modifications; or
 - (b) reject it.
- (7) Where the Scottish Ministers reject a proposed code of practice (or a proposed replacement or revision) under subsection (6)(b) above they may either instruct SNH to submit a new code (or replacement or revision) or they may substitute a new code (or replacement or revision) of their own devising.
- (8) The first code of practice, and any replacement code of practice—
 - (a) must be laid before, and approved by resolution of, the Scottish Parliament; and
 - (b) comes into effect on such date after approval under paragraph (a) as is specified in the code.
- (9) Any revision to a code of practice must—
 - (a) be laid before the Scottish Parliament; and

- (b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).
- (10) The Scottish Parliament may, before such revision comes into effect, resolve that it is not to come into effect.
- (11) The Scottish Ministers must publish a code of practice (or any replacement or revision) no later than the day before the code (or replacement or revision) is to come into effect.
- (12) SNH must—
 - (a) monitor compliance with a code of practice drawn up under this section; and
 - (b) have regard to such a code in exercising its functions under this Act.”.
- (2) In section 45(1) (interpretation) of the 1996 Act, after the definition of “animal foodstuffs” insert—
 - ““code of practice on deer management” means the code of practice currently in operation in pursuance of section 5A of this Act;”.

28 Control agreements and control schemes etc.

- (1) The 1996 Act is amended as follows.
- (2) In section 7 (control agreements)—
 - (a) in subsection (1)—
 - (i) after “SNH” insert “, having had regard to the code of practice on deer management,”,
 - (ii) the word “deer”, where first occurring, is repealed,
 - (iii) in paragraph (a)—
 - (A) at the beginning insert “deer or steps taken or not taken for the purposes of deer management”,
 - (B) in sub-paragraph (i), after “foodstuffs,” insert “to the welfare of deer”,
 - (C) the word “or” immediately after sub-paragraph (i) is repealed,
 - (D) after that sub-paragraph insert—
 - “(ia) damage to public interests of a social, economic or environmental nature; or”,
 - (iv) in paragraph (b), at the beginning insert “deer”,
 - (v) for the words “the deer in that locality should be reduced in number” substitute “or for the remedying of such damage, measures require to be taken in relation to the management of deer”,
 - (vi) the words “for that reduction in number” are repealed,
 - (b) in subsection (3) after “SNH” insert “, having had regard to the code of practice on deer management,”,
 - (c) in subsection (4)—
 - (i) after “After” insert “it has given notice to such owners and occupiers of land as it considers to be substantially interested that”,

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

- (ii) for the words from first “such” to “interested” substitute “those owners or occupiers”,
 - (d) in subsection (5)—
 - (i) the word “and” immediately after paragraph (d) is repealed,
 - (ii) after paragraph (e) insert “; and
 - (f) set out measures, or steps towards taking such measures, which the owners or occupiers are to take during each 12 month period for which the agreement has effect,”
 - (e) after subsection (6) insert—
 - “(7) SNH must, on at least an annual basis, review a control agreement for the purpose of assessing compliance with its provisions.”.
- (3) In section 8 (control schemes)—
 - (a) for subsection (1) substitute—
 - “(A1) This subsection applies where SNH has given notice under subsection (4) of section 7 of this Act and—
 - (a) either—
 - (i) SNH is satisfied that it is not possible to secure a control agreement or that a control agreement is not being carried out; or
 - (ii) 6 months have elapsed since SNH gave the notice and no agreement has been reached on the matters mentioned in that subsection; and
 - (b) SNH continues to have the view that required it to consult under that subsection.
 - (1) Where subsection (A1) above applies and SNH, having had regard to the code of practice on deer management, is satisfied that action is necessary for the purposes mentioned in subsection (1) or, as the case may be, subsection (3) of section 7 of this Act, it shall make a scheme (a “control scheme”) for the carrying out of such measures as it considers necessary for those purposes.”.
 - (b) in subsection (2)—
 - (i) for “Subsection (1) above does” substitute “Subsections (A1) and (1) above do”,
 - (ii) at the end insert “(except where a purpose of the control agreement is to remedy damage caused, directly or indirectly, by deer or by steps taken or not taken for the purposes of deer management).”.
 - (c) subsection (5) is repealed,
 - (d) after subsection (7) insert—
 - “(7A) Where any control scheme has been confirmed, SNH must, on at least an annual basis, review it for the purpose of assessing compliance with its provisions.”.
- (4) In section 10 (emergency measures)—
 - (a) in sub-paragraph (i) of subsection (1)(a) the word “serious” is repealed,
 - (b) after that sub-paragraph insert—

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

“(ia) are causing damage to their own welfare or the welfare of other deer;”.

(5) In section 11 (application of section 10 to natural heritage), the word “serious” is repealed.

(6) In Schedule 2 (provisions as to control schemes)—

- (a) in paragraph 1(b)—
 - (i) for the words from “two” to “situated” substitute “such manner as SNH thinks fit”,
 - (ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,
- (b) in paragraph 3, for the words from “shall” to “may” substitute “—
 - (a) must consider the objection, and
 - (b) may”,
- (c) in paragraph 4—
 - (i) the word “either” where it first occurs is repealed,
 - (ii) the words from “; or” to the end are repealed,
- (d) in paragraph 6(b)—
 - (i) for the words from “two” to “situated” substitute “such manner as the Scottish Ministers think fit”,
 - (ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,
- (e) in paragraph 8, for the words from “shall” to “may” where it second occurs substitute “—
 - (a) must consider the objection, and
 - (b) may”,
- (f) in paragraph 9—
 - (i) the word “either” where it first occurs is repealed,
 - (ii) the words from “; or” to the end are repealed,
- (g) paragraph 11 is repealed,
- (h) in paragraph 12(b)—
 - (i) for the words from “the” where it first occurs to “situated” substitute “such manner as the Scottish Ministers think fit”,
 - (ii) in sub-sub-paragraph (ii), the words “within the district” are repealed,
- (i) in paragraph 13—
 - (i) in sub-paragraph (1), for “and (3)” substitute “to (4)”,
 - (ii) for sub-paragraphs (2) and (3) substitute—

“(2) Any owner or occupier of land who is aggrieved by—

- (a) a decision of the Scottish Ministers to—
 - (i) confirm a control scheme,
 - (ii) make a scheme varying a control scheme,
or
 - (iii) revoke a control scheme, or
- (b) the terms or conditions of such a scheme,
may appeal to the Scottish Land Court.

- (3) An appeal under sub-paragraph (2) must be lodged not later than 28 days after the date of publication of the notice referred to in paragraph 12(b).
- (4) The Scottish Land Court must determine an appeal under sub-paragraph (2) on the merits rather than by way of review and may do so by—
 - (a) affirming the control scheme,
 - (b) directing the Scottish Ministers to revoke the scheme,
 - (c) making such other order as it thinks fit.”.

29 Deer: close seasons etc.

- (1) The 1996 Act is amended as follows.
- (2) In section 5 (close season authorisations)—
 - (a) in subsection (6)—
 - (i) the words from the beginning to “and” where it first occurs are repealed,
 - (ii) for paragraphs (a) and (b) substitute—
 - “(a) the taking or killing is necessary—
 - (i) to prevent damage to any crops, pasture or human or animal foodstuffs on any agricultural land which forms part of that land; or
 - (ii) to prevent damage to any enclosed woodland which forms part of that land; or
 - (b) the taking or killing is necessary—
 - (i) to prevent damage to any unenclosed woodland which forms part of that land; or
 - (ii) to prevent damage, whether directly or indirectly, to the natural heritage generally; or
 - (iii) in the interests of public safety, and no other means of control which might reasonably be adopted in the circumstances would be adequate.”,
 - (b) after subsection (7), add—
 - “(8) An authorisation under subsection (6) or (7) above—
 - (a) may be, to any degree, general or specific (including as regards the land in relation to which it is granted);
 - (b) may be granted to a particular person or to a category of persons.”.
- (3) In section 26 (right of occupier in respect of deer causing serious damage)—
 - (a) in the title, the word “serious” is repealed,
 - (b) in subsection (1)—
 - (i) the words from “Notwithstanding” to “Act,” are repealed,

- (ii) the word “serious” is repealed,
- (c) after that subsection insert—

“(1A) Subsection (1) above does not apply during any period fixed by order under section 5(1) of this Act in relation to the sex and species of the deer concerned.”.

- (4) In section 37 (restrictions on granting of certain authorisations)—
 - (a) in subsection (1), at the beginning insert “Except as mentioned in subsection (1A) below,”,
 - (b) after that subsection, insert—

“(1A) Subsection (1) above does not apply to an authorisation under section 5(6) of this Act to any of the following persons to take or kill, for the purpose of preventing any damage mentioned in section 5(6) (a), any deer found on land falling within section 26(1)(a) or (b) of this Act (“section 26 land”)—

- (a) the occupier of the section 26 land; or
- (b) if authorised by the occupier—
 - (i) the owner of the section 26 land;
 - (ii) an employee of the owner; or
 - (iii) an employee of the occupier, or any other person normally resident on, the section 26 land.”.

30 Register of persons competent to shoot deer etc.

- (1) The 1996 Act is amended as follows.
- (2) Before section 17, insert the following italic heading—

“Unlawful killing, taking and injuring of deer”.

- (3) In section 17 (unlawful killing, taking and injuring of deer), subsection (4) is repealed.
- (4) After that section, insert—

“Register of persons competent to shoot deer

17A Register of persons competent to shoot deer

- (1) The Scottish Ministers may by regulations—
 - (a) make provision for the establishment and operation of a register of persons competent to shoot deer in Scotland;
 - (b) prohibit any person from shooting deer unless the person is—
 - (i) registered; or
 - (ii) supervised by a registered person;
 - (c) provide that being a registered person is sufficient to meet the requirements as to fitness and competence under sections 26(2)(d) and 37(1);
 - (d) require registered persons or owners or occupiers of land to submit cull returns to SNH.

- (2) Regulations under subsection (1) above—
- (a) may make such supplementary, incidental or consequential provision as the Scottish Ministers think fit and may, in particular, make provision (or allow SNH to make provision) in relation to—
 - (i) who is to keep and maintain the register;
 - (ii) applications for registration (or for amendment of, or removal from, the register);
 - (iii) the determination of applications for registration (including the criteria to be used to determine whether a person is competent to shoot deer);
 - (iv) the imposition of conditions on the granting of an application (including conditions about compliance with any requirement for a registered person to submit a cull return);
 - (v) the amendment of the register;
 - (vi) the removal of a person from the register (including by revocation of registration);
 - (vii) the charging of fees in connection with registration;
 - (viii) appeals against decisions to—
 - (A) refuse to register a person;
 - (B) impose conditions on the granting of an application;
 - (C) remove a person from the register;
 - (ix) circumstances in which a person shooting deer is to be regarded as being, or not being, supervised by a registered person;
 - (x) the information to be included in cull returns;
 - (xi) the periods in respect of, and within, which cull returns are to be submitted;
 - (xii) the form and manner in which cull returns are to be submitted;
 - (xiii) the repeal of section 40; and
 - (xiv) consequential modification of any of sections 5, 16, 18, 26 or 37 of, or Schedule 3 to, this Act; and
 - (b) may make different provision for different purposes.
- (3) Before making regulations under subsection (1) above, the Scottish Ministers (or a person nominated by them) must consult such persons and organisations as they consider (or, as the case may be, the nominated person considers) have an interest in the regulations.
- (4) Any person who shoots a deer on any land in contravention of regulations made under subsection (1)(b) above is guilty of an offence.
- (5) Subsection (4) above does not apply where a person shoots a deer for the purpose mentioned in section 25 of this Act.
- (6) Any person who—
- (a) fails without reasonable cause to submit a cull return in accordance with regulations made under subsection (1)(d) above; or
 - (b) knowingly or recklessly provides any information in a cull return so submitted which is, in a material particular, false or misleading,
- is guilty of an offence.

- (7) In this section, “cull return”—
- (a) when required to be submitted by a registered person, means a written statement showing the number of deer of each species and of each sex which to his knowledge has been killed; and
 - (b) when required to be submitted by an owner or occupier of land, means a written statement showing the number of deer of each species and of each sex which to his knowledge has been taken or killed on the land.

17B Review of competence etc. by SNH

- (1) SNH must carry out a review of the following matters if the power in section 17A(1) is not exercised by 1st April 2014—
- (a) levels of competence among persons who shoot deer in Scotland;
 - (b) the effect of such levels of competence on deer welfare.
- (2) In any such review, the matters SNH must consider include—
- (a) the extent to which such persons have been trained to shoot deer and the availability and nature of such training;
 - (b) any available evidence as regards any effect of the absence of such training, or the nature of such training, on the welfare of deer which have been shot.
- (3) If SNH carries out a review, it must—
- (a) when doing so consult such persons and organisations as it considers have an interest in the review; and
 - (b) publish a report of the review.”.
- (5) Before section 18, insert the following italic heading—

“Other offences and attempts to commit offences”.

- (6) In section 30 (power to convict of alternative offence), after “17” insert “, 17A(4)”.
- (7) In section 31(4) (forfeiture of deer), after “17(1), (2) or (3)” insert “, 17A(4)”.
- (8) In section 45(1) (interpretation)—
- (a) after the definition of “red deer” insert—
““registered person” means a person registered in accordance with regulations under section 17A(1);”,
 - (b) after the definition of “roe deer” insert—
““shoot” means discharge a firearm of a class prescribed in an order under section 21(1) of this Act; and “shooting” is to be construed accordingly;”.
- (9) In Schedule 3 (penalties), after the entry for section 17(3) insert—

“17A(4)	Shooting deer when not registered or supervised	a fine of level 4 on the standard scale for each deer in respect of which the offence is committed
---------	---	--

		or 3 months imprisonment or both
17A(6)	Failure to submit cull return or making false or misleading cull return	a fine of level 3 on the standard scale or 3 months imprisonment or both”.

31 Action intended to prevent suffering

- (1) The 1996 Act is amended as follows.
- (2) In section 25 (action intended to prevent suffering)—
- (a) before paragraph (a), insert—
- “(za) a deer which is starving and which has no reasonable chance of recovering;”,
- (b) in paragraph (b), the word “by” is repealed.

32 Offences by bodies corporate, Scottish partnerships etc. under the 1996 Act

- (1) The 1996 Act is amended as follows.
- (2) In section 29 (offences by bodies corporate)—
- (a) the existing text becomes subsection (1),
- (b) after that subsection, insert—
- “(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.”.
- (3) After that section, insert—

“29A Offences by Scottish partnerships etc.

Where an offence under this Act has been committed by a Scottish partnership or other unincorporated association 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—

- (a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;
- (b) in relation to an unincorporated association other than a Scottish partnership, any person who was concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”.