

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Deer Management

Section 78 – Functions of deer panels

387. This section allows for further functions to be conferred on deer panels. Deer panels are appointed by Scottish Natural Heritage (SNH) under section 4 of the Deer (Scotland) Act 1996 (the 1996 Act), subject to the approval of the Scottish Ministers. Deer panels are appointed for the purpose of providing advice to SNH on the subject of deer management. This section inserts new subsections into section 4 of the 1996 Act to enable the Scottish Ministers to make regulations conferring new functions on deer panels, including encouraging engagement of the local community in deer management; communicating issues regarding deer management to the local community; and, communicating the views of the local community to those involved in deer management.

Section 79– Review of compliance with code of practice on deer management

388. This section inserts new section 5B into the 1996 Act, and requires SNH to carry out a review into compliance with the code of practice on deer management.
389. Subsection (1) specifies that SNH must carry out a review into the extent to which the code of practice on deer management is being complied with and is effective in promoting sustainable deer management. In accordance with subsection (2), SNH must submit a report to Scottish Ministers setting out their views as to the extent to which the code has been complied with, and has been effective in promoting sustainable deer management. It must also include any recommendations SNH consider appropriate. Subsection (3) requires the Scottish Ministers to lay the report before the Scottish Parliament.. Subsection (4) specifies the timescales for the review. The first review must be carried out within 3 years of section 79 of the Land Reform (Scotland) Act 2016 coming into force, and subsequent reviews are to be carried out within three years of the date on which the report in respect of the previous review was laid before the Scottish Parliament.

Section 80 – Deer management plans

390. This section provides for a new power for SNH to require a land owner or occupier to produce a deer management plan. SNH can approve the plan with or without modification or reject it. Failure to develop or implement a plan would be grounds for SNH to move to the development of a deer control agreement under section 7 of the 1996 Act. SNH already has the power, where a section 7 agreement fails, or where it is not possible to reach agreement, to proceed to a deer control scheme under section 8 of the 1996 Act.
391. Subsections (1) and (2) provide that section 5A(2)(c) of the 1996 Act is amended to specify that the code of practice on deer management may set out examples of

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circumstances where SNH may require a deer management plan to be produced. Subsection (3) makes a textual amendment to the italic cross heading before section 6 of the 1996 Act.

392. New section 6A is inserted into the 1996 Act by section 80(4) of the Act. New section 6A requires two sets of conditions (A and B) to be met before SNH, having had regard to the code of practice on deer management, can require an owner or occupier of land to produce a deer management plan.
393. Subsection (1)(a) specifies that the plan should set out the measures that those owners and occupiers consider should be taken, the time limit for taking those measures, who is to take those measures, and any other matters which appear to SNH to be necessary. Subsection (1)(b) provides that the plan is to be submitted to SNH for approval.
394. Subsection (2) sets out that condition A is met where deer or deer management or the lack of deer management have caused, are causing, or are likely to cause damage, including to woodland, to agricultural production, including any crops or foodstuffs, to livestock, to the welfare of deer to the natural heritage generally, to public interests of a social, economic or environmental nature, or where they have become a danger to public safety.
395. Subsection (3) sets out that condition B is met if management of deer is required to prevent further damage, remedy damage or prevent danger.
396. Subsection (4) provides that, in subsection (2)(a)(i), “the natural heritage” has the same meaning as in section 7(2) of the 1996 Act.
397. Subsection (5) provides that a deer management plan must be submitted to SNH within 12 months unless a later date is specified by SNH.
398. Subsection (6) provides that SNH may approve a deer management plan with or without modification or reject it. In accordance with subsection (7), before approving a plan with modifications, SNH must consult the owners and occupiers of land who submitted the plan on the proposed modification. Subsection (8) provides that a plan can be amended until SNH decides to approve or reject it.
399. New subsections (4A) and (4B) are inserted in section 7 (control agreements) of the 1996 Act. Subsection (4A) provides that subsection (4) applies where new subsection (4B) applies. Section 7(4) of the 1996 Act provides for SNH, after giving notice to owners and occupiers it considers to be substantially interested in SNH forming a preliminary view on damage caused by deer, to consult with those owners or occupiers on what measures are to be taken, on the time limit for those measures to be taken, and on who is to carry out such measures. New subsection (4B) applies where SNH has given notice under the new section 6A(1) that a deer management plan is required and either the date has passed and a plan has not been submitted, or the plan has been submitted but rejected, or the plan has been approved but the measures set out have not been taken, and in addition where SNH is satisfied that conditions A and B in section 6A(1) continue to be met.

Section 81 – Power to require return on number of deer planned to be killed

400. This section amends the 1996 Act to insert new section 40A (power of SNH to require return on number of deer planned to be killed), and to make amendments to sections 16 and 17A and schedule 3 of that Act consequential to the insertion of this new section.
401. Subsection (2) amends section 16 (service of notices) to take account of notices served under new section 40A.
402. Subsection (3) amends section 17A (register of persons competent to shoot deer) to allow regulations made under that section to repeal and replace the provision made by section 40A.

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403. New section 40A (which is inserted by subsection (4)) provides for a new power for SNH to require a return from an owner or occupier on the number of deer planned to be killed on their land in the following year. The return is to show how many deer of each species and of each sex are planned to be killed.
404. Section 40A(2) provides that any notice must specify a period, of not more than 1 year immediately following the date of service of the notice, for which the return must be completed. Section 40A(3) specifies that anyone who fails to provide the required return within 36 days after service of the notice commits an offence.
405. Subsection (5) amends Schedule 3 of the 1996 Act so that the offence of failing to submit a return is punishable by a fine of up to level 3 on the standard scale. This applies both to the offence under new section 40A(3) and to an offence under section 17A(6) (aa) of the Act.

Section 82 - Increase in penalty for failure to comply with control scheme

406. Schedule 3 of the 1996 Act is amended so that the maximum fine for the offence of failing to comply with a control scheme is increased from level 4 on the standard scale to £40,000.