



Agriculture (Scotland) Act 1948

1948 CHAPTER 45 11 and 12 Geo 6

PART III CONTROL OF INJURIOUS ANIMALS, BIRDS AND WEEDS

Prevention of damage by injurious animals and birds

[^{F1}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 [^{F2} —

- (a) black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge in the close season for that bird (within the meaning of section 2(4) of the Wildlife and Countryside Act 1981 (c.69)); or
- (b) brown hare or mountain hare in the close season for that hare (within the meaning of section 10A(2) of that Act);

and for the purposes of subsection (1) a person is not deemed not to have the right to comply with a requirement falling within this proviso by reason only that, apart from the proviso, compliance with the requirement would constitute an offence under section 1 or (as the case may be) 10A(1) of that Act.]

- (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 [^{F3}included in [^{F4}Schedule 1 to the Wildlife and Countryside Act 1981], as it applies in that area, whether by virtue of the terms thereof or by virtue

Changes to legislation: There are currently no known outstanding effects for the Agriculture (Scotland) Act 1948, Part III Control of Injurious Animals, Birds and Weeds. (See end of Document for details)

of an order of the Secretary of State]; and this section shall apply to such other animals as may be prescribed.

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.

^{F5}[In subsection (3) above “ deer ” means any species of deer which is not included (3A) in the definition of “ deer ” in ^{F6}section 45 of the Deer (Scotland) Act 1996] (interpretation).

(4) ^{F7}

^{F8}[Where it appears to the Secretary of State expedient for the purpose of preventing (5) damage by rabbits to crops, pasture, trees, hedges, banks or any works on land, he may by notice in writing served on the occupier of any land (or, in the case of unoccupied land, the person entitled to occupy it) require him to take on the land, within the time specified in the notice, such steps as may be so specified to destroy or reduce the breeding places or cover for rabbits or to exclude rabbits therefrom, or to prevent the rabbits living in any place on the land from spreading to or doing damage in any other place; but every such notice shall specify a time within which the occupier or any person interested in the land may submit to the Secretary of State written objections to the notice, and shall be provisional only and of no effect, unless confirmed after the expiration of that time by a further notice in writing served on the occupier of the land; and, where the occupier holds the land under a contract of tenancy, a copy of any notice under this subsection shall be served on any person to whom the occupier pays rent under the tenancy.

A provisional notice under this subsection may be confirmed either without modifications or with such modifications as appear to the Secretary of State desirable having regard to any objections submitted to him.]]

Textual Amendments

- F1** Ss. 39–42 repealed (so far as relating to sika deer within the meaning of the Deer (Amendment) (Scotland) Act 1982 or to any hybrid mentioned in section 1(4) of that Act) by [Deer \(Amendment\) \(Scotland\) Act 1982 \(c. 19, SIF 4:3\)](#), s. 66(1), **Sch. 3**
- F2** Words in s. 39(2) substituted (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), s. 43(1), **Sch. Pt para. 1** (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(i)(i)
- F3** Words substituted by [Protection of Birds Act 1954 \(c. 30\)](#), **Sch. 5**
- F4** Words substituted by [Wildlife and Countryside Act 1981 \(c. 69, SIF 4:5\)](#), **s. 72(4)**
- F5** S. 39(3A) inserted (18.10.1996) by 1996 c. 44, ss. 13(1), 14(2), **Sch. 1 para. 2(2)**.
- F6** Words in s. 39(3A) substituted (18.11.1996) by 1996 c. 58, s. 48(2)(6), **Sch. 4 para. 1(2)** (with s. 43(1)).
- F7** S. 39(4) repealed by [Pests Act 1954 \(c. 68\)](#), **Sch.**
- F8** S. 39(5) added by [Pests Act 1954 \(c. 68\)](#), **s. 2(1)**

Modifications etc. (not altering text)

- C1** S. 39 restricted by Prevention of Damage by [Pests Act 1949 \(c. 55\)](#), **s. 20**; saved by [Protection of Birds Act 1954 \(c. 30\)](#), **s. 4(1)(A)**; extended by [Pests Act 1954 \(c. 68\)](#), **ss. 1(6)(9)(14)**, 3(2); amended by [Pests Act 1954 \(c. 68\)](#), **s. 4(1)(2)**
- C2** Ss. 39-42 repealed so far as relating to red deer by [Deer \(Scotland\) Act 1959 \(c. 40\)](#), **Sch. 3**

Changes to legislation: There are currently no known outstanding effects for the Agriculture (Scotland) Act 1948, Part III Control of Injurious Animals, Birds and Weeds. (See end of Document for details)

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 the owner or the occupier is responsible for the [F9 control of the management or farming, as the case may be, of the land in question] be duly served if served on the said agent or servant.

Textual Amendments

F9 Words substituted by [Pests Act 1954 \(c. 68\), s. 4\(3\)](#)

Changes to legislation: There are currently no known outstanding effects for the Agriculture (Scotland) Act 1948, Part III Control of Injurious Animals, Birds and Weeds. (See end of Document for details)

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.

Modifications etc. (not altering text)

- C3** S. 42 saved by Prevention of Damage by Pests Act 1949 (c. 55), s. 20; extended by Pests Act 1954 (c. 68), s. 2(2)

[42A] ^{F10} Meaning of “animals” for purposes of section 40 to 42.

In sections 40 to 42 of this Act “animals” does not include any species of deer which is included in the definition of “deer” in [^{F11}section 45 of the Deer (Scotland) Act 1996]] (interpretation).

Textual Amendments

- F10** S. 42A inserted (18.10.1996) by 1996 c. 44, ss. 13(1), 14(2), Sch. 1 para. 2(3).
F11 Words in s. 42A substituted (1.4.1996) by 1996 c. 58, s. 48(2)(6), Sch. 4 para. 1 (with s. 43(1)).

Prevention of Damage by Deer

- 43** (1) ^{F12}
 (2) ^{F13}

Textual Amendments

- F12** S. 43(1) repealed by Deer (Amendment) (Scotland) Act 1982 (c. 19, SIF 4:3), s. 13(2), Sch. 3
F13 S. 43(2), 44–47 repealed by Deer (Scotland) Act 1959 (c. 40), Sch. 3

- 44—47** ^{F14}

Textual Amendments

- F14** S. 43(2), 44–47 repealed by Deer (Scotland) Act 1959 (c. 40), Sch. 3

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Amendments of Law relating to Killing of Hares and Rabbits

48 Amendment of 43 & 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 ^{M1}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) F15

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Textual Amendments

F15 S. 48(5) repealed by [Agriculture Act 1958 \(c. 71\)](#), [Sch. 3](#)

Marginal Citations

M1 [1880 c. 47](#).

49 Provision as to use of poisonous substances.

A person shall not be guilty of an offence under section seven of the ^{M2}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.

Marginal Citations

M2 [1912 c. 14](#).

[^{F16}50 Prohibition of night shooting, and use of spring traps.

- (1) Subject to the provisions of this section, a person shall be guilty of an offence under this subsection if—
 - (a) between the expiration of the first hour after sunset and the commencement of the last hour before sunrise, he uses a firearm for the purpose of killing hares or rabbits; or
 - (b) for the purpose of killing or taking animals, he uses, or knowingly permits the use of, any spring trap other than an approved trap, or uses, or knowingly permits the use of, an approved trap for animals or in circumstances for which it is not approved; or
 - (c) he sells, or exposes or offers for sale, any spring trap other than an approved trap with a view to its being used for a purpose which is unlawful under the last foregoing paragraph; or
 - (d) he has any spring trap in his possession for a purpose which is unlawful under this subsection.
- (2) A person guilty of an offence under the foregoing subsection shall be liable on summary conviction to a fine not exceeding twenty pounds or, if he has been previously convicted of such an offence, a fine not exceeding fifty pounds.
- (3) In this section any reference to an approved trap refers to a trap of a type and make for the time being specified by order of the Secretary of State as approved by him either generally or subject to conditions as to the animals for which or the circumstances in which it may be used, and any reference to the animals or circumstances for which a trap is approved shall be construed accordingly.
- (4) Subject to the provisions of [^{F17}subsections (4A) and (5)], the Secretary of State may from time to time by order authorise the use, for the purpose of killing or taking animals, of spring traps other than approved traps, and such authority may be granted—

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- (a) either generally or subject to such conditions as to the animals for which or the circumstances in which such traps may be used as may be specified in the order;
- (b) either 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 so specified;

and paragraph (b) of subsection (1) of this section shall not render unlawful the use of a spring trap under such an authority.

[An order made under subsection (3) may not specify any type or make of trap as ^{F18}(4A) approved, and an order made under subsection (4) may not authorise the use of any trap, where the trap is a leghold trap.]

- (5) The Secretary of State may—
 - (a) if he is satisfied, having regard to the quantities of approved traps available at reasonable prices and to such other considerations as seem to him relevant, that it is expedient to do so, by order withdraw any authority granted under [^{F19}subsection (4)];
 - (b) when he is satisfied that the power to grant authorities under the said subsection is no longer necessary, by regulation withdraw all subsisting authorities granted under that subsection;

and after such regulation has been made it shall not be lawful for the Secretary of State, unless the regulation is revoked under subsection (1) of section five of the ^{M3}Statutory Instruments Act, 1946, to grant an authority under [^{F19}subsection (4)].

- (6) Paragraph (b) of subsection (1) of this section shall not render unlawful the experimental use of a spring trap under and in accordance with a licence given by the Secretary of State to enable a trap to be developed or tested with a view to its being approved under subsection (3) of this section.
- (7) Subsection (1) of this section shall not apply to spring traps of any description specified by order of the Secretary of State as being adapted solely for the destruction of rats, mice or other small ground vermin.
- (8) The power of the Secretary of State to make orders under this section shall be exercisable by statutory instrument which, in the case of an order made under the last foregoing subsection, shall be subject to annulment by resolution of either House of Parliament.

[In subsection (4A), “leghold trap” means a device designed to restrain or capture an ^{F20}(9) animal by means of jaws which close tightly upon one or more of the animal’s limbs, thereby preventing withdrawal of the limb or limbs from the trap.]]

Textual Amendments

- F16** Ss. 50, 50A substituted for s. 50 by [Pests Act 1954 \(c. 68\), s. 10](#)
- F17** Words in s. 50(4) substituted (28.3.2019) by [The Humane Trapping Standards Regulations 2019 \(S.I. 2019/22\)](#), regs. 1(1), **8(a)**
- F18** S. 50(4A) inserted (28.3.2019) by [The Humane Trapping Standards Regulations 2019 \(S.I. 2019/22\)](#), regs. 1(1), **8(b)**
- F19** Words in s. 50(5) substituted (28.3.2019) by [The Humane Trapping Standards Regulations 2019 \(S.I. 2019/22\)](#), regs. 1(1), **8(c)**

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F20 S. 50(9) inserted (28.3.2019) by [The Humane Trapping Standards Regulations 2019 \(S.I. 2019/22\)](#), regs. 1(1), **8(d)**

Modifications etc. (not altering text)

- C4** S. 50(1) excluded by [Wildlife and Countryside Act 1981 \(c. 69, SIF 4:5\)](#), s. 12, **Sch. 7 para. 2(1)**
- C5** S. 50(2) has effect as if the maximum fines there mentioned were fines not exceeding level 3 on the standard scale by virtue of [1975 c. 21, ss. 289C, 289G, Sch. 7C](#) (as inserted by [1977 c. 45, Sch. 11 paras. 5, 13](#) and by [1982 c. 48, s. 54](#)) (which 1975 Act was repealed (1.4.1996) by [1996 c. 40, ss. 6, 7\(2\), Sch. 5](#)) and (1.4.1996) by virtue of [1996 c. 40, ss. 3, 7\(2\), Sch. 1 para. 3\(1\), Sch. 2 Pt. II](#).
- C6** S. 50(4) amended by [Agriculture \(Spring Traps\) \(Scotland\) Act 1969 \(c. 26\), s. 2, s. 50\(4\)\(5\)](#) repealed as from 1st April 1973 by [Agriculture \(Spring Traps\) \(Scotland\) Act 1969 \(c. 26\), ss. 1, 3](#)

Marginal Citations

M3 [1946 c. 36](#).

[^{F21}50A Open trapping of hares and rabbits.

- (1) Subject to the provisions of this section, a person shall be guilty of an offence under this subsection if, for the purpose of killing or taking hares or rabbits, he uses, or knowingly permits the use of, a spring trap elsewhere than in a rabbit hole.
- (2) A person guilty of an offence under the foregoing subsection shall be liable on summary conviction to a fine not exceeding twenty pounds or, if he has been previously convicted of such an offence, a fine not exceeding fifty pounds.
- (3) Subsection (1) of this section shall not render unlawful the use of spring traps under and in accordance with a licence given by the Secretary of State.
- (4) A licence under this section—
 - (a) may be embodied in a rabbit clearance order under the ^{M4}[Pests Act, 1954](#), or in a notice given under subsection (1) of section thirty-nine of this Act; and
 - (b) whether so embodied or not, may be revoked by the Secretary of State (in whole or in part) by giving notice of the revocation in such manner as he thinks sufficient to inform the persons concerned.]

Textual Amendments

F21 [Ss. 50, 50A](#) substituted for s. 50 by [Pests Act 1954 \(c. 68\), s. 10](#)

Modifications etc. (not altering text)

C7 [S. 50A\(2\)](#) has effect as if the maximum fines there mentioned were fines not exceeding level 3 on the standard scale by virtue of [1975 c. 21, ss. 289C, 289G, Sch. 7C](#) (as inserted by [1977 C. 45, Sch. 11 paras. 5, 13](#) and by [1982 c. 48, s. 54](#)) (which 1975 Act was repealed (1.4.1996) by [1996 c. 40, ss. 6, 7\(2\), Sch. 5](#)) and (1.4.1996) by virtue of [1996 c. 40, ss. 3, 7\(2\), Sch. 1 para. 3\(1\), Sch. 2 Pt. II](#).

Marginal Citations

M4 [1954 c. 68](#).

Changes to legislation: There are currently no known outstanding effects for the Agriculture (Scotland) Act 1948, Part III Control of Injurious Animals, Birds and Weeds. (See end of Document for details)

Injurious Weeds

51 ^{F22}

Textual Amendments

F22 S. 51 repealed by [Weeds Act 1959 \(c. 54\)](#), [Sch.](#)

Supplementary

^{F23}**52**

Textual Amendments

F23 S. 52 repealed (25. 9. 1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55\)](#), ss. 88(2), 89(2), [Sch. 13 Pt.I](#) (with s. 45(3), [Sch. 12](#) paras. 1, 3)

^{F24}**53** **Persons acting under this Part of this Act not required to obtain game licences.**
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Textual Amendments

F24 S. 53 repealed (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), s. 43(1), [Sch. Pt. 2](#) (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(l)(ii) (as amended by S.S.I. 2011/287, art. 2)

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—

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...
^{F25}
...

“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;

^{F25}
...

Textual Amendments

F25 Definitions in s. 54 repealed (25. 9. 1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55\)](#), ss. 88(2), 89(2), [Sch. 13 Pt.I](#) (with s. 45(3), [Sch. 12](#) paras. 1, 3)

Changes to legislation:

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