



Night Poaching Act 1828

1828 CHAPTER 69 9 Geo 4

An Act for the more effectual Prevention of Persons going armed by Night for the Destruction of Game.
F1

[19th July 1828]

. . . F2 And whereas the Practice of going out by night for the purpose of destroying Game has F2 very much increased of late years, and has in very many instances led to the commission of Murder, and of other grievous offences; and it is expedient F2 to make more effectual Provisions than now by law exist for repressing such practice:

Textual Amendments

- F1 Act repealed (S.) (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011](#) (asp 6), s. 43(1), [Sch.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)
- F2 Words repealed by [Statute Law Revision \(No. 2\) Act 1888](#) (c. 57)

Modifications etc. (not altering text)

- C1 Short title “The Night Poaching Act 1928” given by [Short Titles Act 1896](#) (c. 14)
- C2 Act extended by [Night Poaching Act 1844](#) (c. 29), s. 1; amended (S.) by [Game Laws Amendment \(Scotland\) Act 1877](#) (c. 28), s. 10; amended as to prosecutions in the sheriff court with the provision that the same shall be taken at the instance of the procurator fiscal by [Sheriff Courts and Legal Officers \(Scotland\) Act 1927](#) (c. 35), s. 12 and S.R. & O. 1938/606 (Rev. XXI, p. 698: 1938 II, p. 3142); amended as to imprisonment with hard labour by [Criminal Justice Act 1948](#) (c. 58), s. 1(2) and [Criminal Justice \(Scotland\) Act 1949](#) (c. 94), s. 16(2) and as to transportation by [Penal Servitude Act 1857](#) (c. 3), s. 2, [Criminal Justice Act 1948](#) (c. 58), s. 1(1)
- C3 Certain words of enactment and other words repealed by [Statute Law Revision \(No. 2\) Act 1888](#) (c. 57) and remaining words of enactment omitted under authority of [Statute Law Revision Act 1948](#) (c. 62), s. 3

[1] **Persons taking or destroying game by *Night* to be committed, for the 1st Offence, for 3 Months, and kept to hard labour, and to find *Sureties*; 2d Offence, 6**

Changes to legislation: There are currently no known outstanding effects for the Night Poaching Act 1828. (See end of Document for details)

months, and kept to hard labour, and to find sureties; 3d Offence, to be liable to transportation. **E+W**

.....^{F3} if any person shall, by night, unlawfully take or destroy any game or rabbits in any land, whether open or enclosed, or shall by night unlawfully enter or be in any land, whether open or enclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game, such offender shall, upon conviction thereof before two justices of the peace, be committed for the first offence to the common gaol or house of correction for any period not exceeding three calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognizance, or in Scotland by bond of caution, himself in ten pounds, and two sureties in five pounds each, or one surety in ten pounds, for his not so offending again for the space of one year next following; and in case of not finding such sureties, shall be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties are sooner found; and in case such person shall so offend a second time, and shall be thereof convicted before two justices of the peace, he shall be committed to the common gaol or house of correction for any period not exceeding six calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognizance, or bond as aforesaid, himself in twenty pounds, and two sureties in ten pounds each, or one surety in twenty pounds, for his not so offending again for the space of two years next following, and in case of not finding such sureties, shall be further imprisoned and kept to hard labour for the space of one year, unless such sureties are sooner found; and in case such person shall so *offend* a third time, he shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years; and in Scotland, if any person shall so offend a first, second, or third time, he shall be liable to be punished in like manner as is hereby provided in each case.

Extent Information

E1 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F3 Words repealed by [Statute Law Revision \(No. 2\) Act 1888 \(c. 57\)](#)

Modifications etc. (not altering text)

C4 S. 1 amended (E.W.) by [Games Laws \(Amendment\) Act 1960 \(c. 36\)](#), **ss. 1(1)(3), 2, 6(2)**

1 Persons taking or destroying game by *Night* to be committed, for the 1st Offence, for 3 Months, and kept to hard labour, and to find *Sureties*; **S**

...^{F12} if any person shall, by night, unlawfully take or destroy any game or rabbits in any land, whether open or enclosed, or shall by night unlawfully enter or be in any land, whether open or enclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game, [^{F15} he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

Changes to legislation: There are currently no known outstanding effects for the Night Poaching Act 1828. (See end of Document for details)

Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

- F12** Words repealed by [Statute Law Revision \(No. 2\) Act 1888 \(c. 57\)](#)
F13 Words in s. 1 substituted (S.) (1.4.1996) by [1995 c. 40, ss. 3, 7\(2\), Sch. 1 para. 1, Sch. 2 Pt. I](#)

Modifications etc. (not altering text)

- C9** Mode of trial specified (S.) (1.4.1996) by [1995 c. 46, ss. 292\(1\), 309\(2\), Sch. 10 para. 1](#)

2 **Owners or occupiers of land, lords of manors, or their servants, may apprehend offenders. Offenders assaulting or offering violence deemed guilty of misdemeanor, and be liable to be transported for seven years, or imprisoned for two years.**

Where any person shall be found upon any land committing any such offence as is herein-before mentioned, it shall be lawful for the owner or occupier of such land . . .^{F4}, or for the lord of the manor or reputed manor wherein such land may be situate, and also for any gamekeeper or servant of any of the persons herein mentioned, or any person assisting such gamekeeper or servant, to seize and apprehend such offender upon such land, or in case of pursuit being made, in any other place to which he may have escaped therefrom, and to deliver him, as soon as may be, into the custody of a peace officer, in order to his being conveyed before two justices of the peace; and in case such offender shall assault or offer any violence with any gun, crossbow, fire arms, bludgeon, stick, club, or any other offensive weapon whatsoever, towards any person hereby authorized to seize and apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years; and in Scotland, whenever any person shall so offend, he shall be liable to be punished in like manner.

Textual Amendments

- F4** Words repealed by [Wild Creatures and Forest Laws Act 1971 \(c. 47\), Sch.](#)

^{F5}3 **Power to issue a warrant for apprehension of offenders.**

Where any person shall be charged on the oath of a credible witness, or in Scotland on the application of the procurator fiscal of court, before any justice of the peace, with any offence punishable upon summary conviction by virtue of this Act, the justice may issue his warrant for apprehending such person, and bringing him before two justices of the peace, to be dealt with according to law.

Textual Amendments

- F5** S. 3 repealed (E.W.) by [Summary Jurisdiction Act 1884 \(c. 43\), s. 4, Sch.](#)

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4 Limitation of time for proceedings under this Act.

[^{F6}The prosecution for every offence punishable upon summary conviction by virtue of this Act shall be commenced within six calendar months after the commission of the offence;] and the prosecution for every offence punishable upon indictment, or otherwise than upon summary conviction, by virtue of this Act, shall be commenced within twelve calendar months after the commission of such offence.

Textual Amendments

F6 Words repealed (E.W.) by [Summary Jurisdiction Act 1884 \(c. 43\)](#), s. 4, [Sch.](#)

^{F7}5 Form of conviction

The justices of the peace before whom any person shall be summarily convicted of any offence against this Act may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case may require; that is to say, “Be it remembered, that on the day of in the year of our Lord , at , in the county of [or riding, division, liberty, city, &c. as the case may be,] A.O. is convicted before us, [naming the justices], two of his Majesty’s justices of the peace for the said county, [or riding, &c.] for that he the said A.O. did [specify the offence, and the time and place when and where the same was committed, as the case may be, and on a second conviction state the first conviction]; and we the said justices adjudge the said A.O. for his said offence to be imprisoned in the and there kept to hard labour for the period of and at the expiration of such period to find sureties, by recognizance, or bond of caution in Scotland, himself in the sum of ten pounds, and two sureties in the sum of five pounds each, or one surety in the sum of ten pounds, conditioned that he the said A.O. shall not so offend again for the space of one year next following; and we further adjudge the said A.O., in case he shall not find such sureties as aforesaid, to be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties shall be sooner found. Given under our hands, the day and year first above mentioned.”

Textual Amendments

F7 S. 5 repealed (E.W.) by [Summary Jurisdiction Act 1884 \(c. 43\)](#), s. 4, [Sch.](#)

^{F8}6 Appeal.

Any person who shall think himself aggrieved by any such summary conviction may appeal to the next court of general or quarter sessions which shall be holden, not less than twelve days after the day of such conviction, for the county, riding, or division wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or within such three days enter into a recognizance, or bond of caution in Scotland, with a sufficient surety, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be awarded by the court; and upon such notice being given, and such recognizance or bond being entered into, the justice before whom the

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same shall be entered into shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be dealt with and punished according to the conviction, and to pay such costs as shall be awarded; and shall, if necessary, issue process for enforcing such judgment.

Textual Amendments

F8 S. 6 repealed (E.W.) by [Courts Act 1971 \(c. 23\)](#), [Sch. 11 Pt. IV](#)

^{F97} No certiorari, &c.

No such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari, or otherwise, into any of his Majesty's superior courts of record, or in Scotland by advocation or suspension into any superior court; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Textual Amendments

F9 S. 7 repealed (E.W.) by [Courts Act 1971 \(c. 23\)](#), [Sch. 11 Pt. IV](#)

Modifications etc. (not altering text)

C5 S. 7 amended as to advocation by [Court of Session Act \(c. 100\)](#), s. 65

^{F108} Convictions to be returned to the quarter sessions and registered, and may be given in evidence.

On every conviction under this Act for a first or second offence the convicting justices shall return the same to the next quarter sessions for the county, riding, division, city, or place wherein such offence shall have been committed; and the record of such conviction, or any copy thereof, shall be evidence in any prosecution to be instituted against the party thereby convicted for a second or third offence; and the clerk of the peace shall immediately on such return make or cause to be made a memorandum of such conviction in a register to be kept by him of the names and places of abode of the persons so convicted, and shall state whether such conviction be the first or second

Textual Amendments

F10 S. 8 repealed (E.W.) by [Courts Act 1971 \(c. 23\)](#), [Sch. 11 Pt. IV](#)

9 If persons to the number of three, being armed, enter any land for the purpose of taking or destroying game, they shall be deemed guilty of a misdemeanor. Punishment.

If any persons, to the number of three or more together, shall by night unlawfully enter or be in any land, whether open or inclosed, for the purpose of taking or destroying

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game or rabbits, any of such persons being armed with any gun, crossbow, fire arms, bludgeon, or any other offensive weapon, each and every of such persons shall be guilty of a misdemeanor, and being convicted thereof^{F11}, shall be liable, at the discretion of the court, to be transported beyond seas for any term not exceeding fourteen years nor less than seven years, or to be imprisoned and kept to hard labour for any term not exceeding three years; and in Scotland any persons so offending shall be liable to be *punished* in like manner.

Textual Amendments

F11 Words repealed by [Criminal Justice Administration Act 1962 \(c. 15\)](#), **Sch. 5 Pt. II**

Modifications etc. (not altering text)

C6 S. 9 amended (E.W.) by [Game Laws \(Amendment\) Act 1960 \(c. 36\)](#), **ss. 1(1)(3)**, 2, 6(2)

10 Jurisdiction of sheriffs in Scotland. Proving of convictions.

In Scotland the sheriff of the county within which the offence shall have been committed shall have a cumulative jurisdiction with the justices of the peace in regard to the same; and the conviction in Scotland may be proved in the same manner as a conviction in any other case according to the law of Scotland.

Modifications etc. (not altering text)

C7 S. 10 amended by [Game Laws Amendment \(Scotland\) Act 1877 \(c. 28\)](#), **s. 10** and [Criminal Procedure \(Scotland\) Act 1887 \(c. 35\)](#), **s. 56**

11 Third Offences, &c. to be tried in certain courts

In all cases in Scotland of a third offence, or in other cases in Scotland where a sentence of transportation may, by the provisions of this Act, be pronounced, the offender shall be tried before the High Court or circuit court of Justiciary

Modifications etc. (not altering text)

C8 S. 11 amended by [Game Laws Amendment \(Scotland\) Act 1877 \(c. 28\)](#), **s. 10** and [Criminal Procedure \(Scotland\) Act 1887 \(c. 35\)](#), **s. 56**

12 What time shall be considered night.

Provided always, that for the purposes of this Act the night shall be considered and is hereby declared to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.

13 What shall be deemed game.

For the purposes of this Act the word “game” shall be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards.

Changes to legislation:

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