



# Agriculture (Scotland) Act 1948

## 1948 CHAPTER 45

### PART III

#### CONTROL OF INJURIOUS ANIMALS, BIRDS AND WEEDS.

##### *Prevention of Damage by Deer.*

#### **43 Right of occupier of agricultural holding to kill deer.**

- (1) The occupier of an agricultural holding or of enclosed woodlands and any person authorised by him in writing shall be entitled, notwithstanding anything in any contract or agreement between such occupier and his landlord, to kill and take, and to sell or otherwise dispose of the carcasses of, any deer found on any arable land, garden grounds or land laid down in permanent grass (other than moorland and unenclosed land) forming part of the holding, or on such woodlands, as the case may be.
- (2) A right conferred by or in pursuance of the foregoing subsection shall not be exercised between one hour after sunset and one hour before sunrise.

#### **44 Powers of Secretary of State to reduce number of deer.**

- (1) Without prejudice to the powers conferred on him by the foregoing provisions of this Part of this Act, the Secretary of State shall, after considering any complaint made to him concerning damage caused on any land by deer to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks or any works on that land, and after affording to the occupier and the owner of the land and any other person appearing to the Secretary of State to have an interest 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, have power to do, if he should think fit, either or both of the following things, that is to say—
  - (a) to authorise in writing the occupier of any agricultural holding forming part of the land and such number of persons authorised by the occupier in writing as the Secretary of State may determine, notwithstanding anything in any contract or agreement between such occupier and his landlord, to kill, during

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- such period and subject to such conditions (including conditions as to the removal and sale of the carcasses of deer killed) as the Secretary of State may determine, deer found on any moorland or unenclosed land forming part of the holding; or
- (b) to authorise in writing any person to enter on the land of any owner who has failed to take reasonable steps to control the number of deer on his land, and to kill on such land, during such period and subject to such conditions (including conditions as to the removal and sale of the carcasses of deer killed) as the Secretary of State may determine, such number of deer of either sex as the Secretary of State may think necessary.
- (2) A right conferred in pursuance of paragraph (a) of the last foregoing subsection on the occupier of an agricultural holding and persons authorised by him shall not be exercised—
- (a) at any time between the tenth day of April and the sixteenth day of October in any year; or
- (b) between one hour after sunset and one hour before sunrise.
- (3) A person authorised under paragraph (b) of subsection (1) of this section shall not be entitled to enter on the land at any time between the tenth day of April and the sixteenth day of October in any year, and shall, before entering on any land for the purpose of killing deer thereon, give to the owner and, any tenant thereof not less than ten days' notice of his intention to do so, and shall allow such owner or tenant, if they so desire, an opportunity of assisting in any operations undertaken for the purpose of reducing the number of deer on such land.
- (4) Before authorising any person in pursuance of paragraph (a) of subsection (1) of this section, the occupier shall give notice in writing to the Secretary of State and to his landlord of the name of the person proposed to be so authorised and shall at the same time certify that that person is experienced in the use of firearms; and the occupier shall not authorise that person until the approval in writing of the Secretary of State has been given.
- (5) The Secretary of State may at any time by notice in writing given to the occupier of an agricultural holding withdraw any authorisation granted to him under paragraph (a) of subsection (1) of this Section or vary any condition attached to such authorisation with respect to the periods during which the right may be exercised, the number of persons who may be authorised by the occupier, or the number of deer of each sex that may be killed.
- (6) The Secretary of State may at any time by notice in writing given to the person in respect of whom approval has been given by him under subsection (4) of this section withdraw that approval; and on such approval being so withdrawn that person shall be deemed to have ceased to be authorised by the occupier.
- (7) The Secretary of State shall give notice in writing to the landlord concerned of the granting or the withdrawal of, or of the variation of any condition attached to, any authorisation under paragraph (a) of subsection (1) of this section and of the giving of any approval under subsection (4) of this section, and shall give notice in writing to the occupier and the landlord concerned of the withdrawal under the last foregoing subsection of any approval.

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#### **45 Recovery of expenses of killing deer.**

- (1) When an authority granted by the Secretary of State under paragraph (b) of subsection (1) of the last foregoing section for the killing of deer on any land includes authority to sell the carcasses of the deer killed, the expenses incurred in carrying out the operations so authorised shall be defrayed in the first instance from the proceeds of the sale of the carcasses, and if the said expenses are greater than the said proceeds, the difference shall be recoverable from the owner of the land by the Secretary of State, and if less, the difference shall be recoverable from the Secretary of State by the owner of the land.
- (2) When such authority does not include authority to sell the carcasses, the carcasses shall be deemed to be the property of the owner of the land, and the expenses, or such proportion thereof as the Secretary of State may think equitable, incurred in carrying out the operations so authorised shall be recoverable by the Secretary of State from the owner of the land.
- (3) Where the land belongs to two or more owners the difference between the expenses and the "proceeds as ascertained under subsection (1) of this section, or the expenses or the proportion thereof as ascertained under subsection (2) of this section, shall be recoverable by or recoverable from, as the case may require, those owners' in such proportions as the Secretary of State may allocate, and in making such allocation the Secretary of State shall take into account any services rendered by any owner in connection with the carrying out of operations on his land.
- (4) The Secretary of State shall furnish to each owner a statement showing the expenses incurred in carrying out the operations authorised as aforesaid, the amount, if any, received in respect of the sale of the carcasses and the amount recoverable by or recoverable from each owner under this section ; and any owner who is aggrieved by such statement or any part thereof may, within one month after such statement has been furnished to him, appeal, to the Land Court who may, if it appears to them equitable so to do, vary the amount recoverable by or recoverable from the owner, as the case may be.

#### **46 Returns of numbers etc. of deer.**

- (1) The Secretary of State may .by notice in writing served on the owner of any land require him to make a return in such form as the Secretary of State may require showing the number of deer of each sex which to his knowledge have been killed on the land during such period (not exceeding- five years) immediately preceding the service of the-notice as may be specified therein, and also a return showing the number of deer of each sex which he estimates to be on the land.
- (2) If any person on whom a notice under the foregoing subsection has been served—
  - (a) fails or neglects to make the required return within thirty-six days after the service of the notice, of
  - (b) in making such a return as aforesaid knowingly or recklessly furnishes any information which is false in a material particular,he shall be liable on summary conviction to a fine not exceeding fifty pounds.

#### **47 Entry on and inspection of lands.**

Notwithstanding the provisions of section eighty-two of this Act, the powers of entry and inspection thereby conferred shall not, during the period beginning on the first

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day of August and ending on the fifteenth day of October, be exercisable in relation to land occupied and used as a deer forest for the purpose of determining whether, and if so in what manner, any of the powers conferred on the Secretary of State under this Part of this Act are to be exercised.