



# Deer (Scotland) Act 1996

## 1996 CHAPTER 58

An Act to consolidate the legislation relating to deer in Scotland. [24th July 1996]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### THE DEER COMMISSION FOR SCOTLAND

#### 1 The Deer Commission for Scotland

- (1) There shall continue to be a commission known as the Deer Commission for Scotland (in this Act referred to as “the Commission”) which shall—
  - (a) in accordance with the provisions of this Act, further the conservation, control and sustainable management of deer in Scotland, and keep under review all matters, including their welfare, relating to deer; and
  - (b) exercise such other functions as are conferred on them by or under this Act or any other enactment.
- (2) It shall be the duty of the Commission, in exercising their functions, to take such account as may be appropriate in the circumstances of—
  - (a) the size and density of the deer population and its impact on the natural heritage;
  - (b) the needs of agriculture and forestry; and
  - (c) the interests of owners and occupiers of land.
- (3) The Commission shall carry out their functions in accordance with such directions of a general character as may be given by the Secretary of State.
- (4) The Commission shall be appointed by the Secretary of State and shall consist of a chairman and such number of other members, being not less than nine nor more

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than twelve in total, as the Secretary of State considers appropriate to represent the interests of persons or organisations concerned with each of the matters mentioned in paragraph (a) of subsection (5) below; and subsections (5) and (6) below shall apply to the appointment of the members other than the chairman.

- (5) Subject to subsection (4) above and subsection (6) below, the Secretary of State may appoint any person who appears to him—
- (a) to have knowledge or experience of one or more of the following matters—
    - (i) deer management;
    - (ii) agriculture (including crofting);
    - (iii) forestry and woodland management; and
    - (iv) the natural heritage,
 in so far as that matter may be affected by the Commission’s exercise of their functions; and
  - (b) generally, to be an appropriate person, to be a member of the Commission; and, subject to subsection (6)(c) below, of the persons so appointed, at least one third shall be persons having knowledge or experience of deer management.
- (6) Before making an appointment under subsection (5) above, the Secretary of State shall—
- (a) afford to such organisations as appear to him to represent the interests of persons concerned with the matters mentioned in subsection (5)(a) above an opportunity to suggest the name of any person who would in their view be an appropriate person for such an appointment;
  - (b) consider any such suggestions; and
  - (c) where names have been suggested by organisations representing the interests of deer managers, select the one third of the Commission referred to in subsection (5) above from among those names.
- (7) Schedule 1 to this Act (which makes supplementary provision with respect to the Commission) shall have effect.

## **2 Advice and annual reports to Secretary of State**

- (1) The Commission shall—
- (a) advise the Secretary of State on any such matter relating to the purposes of this Act as he may refer to them; and
  - (b) bring to his attention any matter relating to deer of which in the opinion of the Commission he ought to be apprised.
- (2) The Commission shall make an annual report to the Secretary of State on the exercise of their functions under this Act.
- (3) The Secretary of State shall lay a copy of the report made under subsection (2) above before each House of Parliament, together with such comments as he may think fit to make.

## **3 Power of the Commission to facilitate exercise of functions**

- (1) The Commission shall have power—

- (a) to issue guidance or advice, whether general or particular, to any person or organisation; and
  - (b) to conduct, or to collaborate with any person or organisation which is conducting—
    - (i) any research, inquiry or investigation into questions of practical or scientific importance; or
    - (ii) any experiment, trial or demonstration,relating to the conservation, control or sustainable management of deer or to any other aspect of the Commission's functions.
- (2) For the avoidance of doubt, it is provided that the Commission may exercise the powers conferred by subsection (1) above in relation to the general welfare of deer, in so far as that matter is not otherwise included in their functions under this Act.

#### **4 Appointment of panels**

- (1) Subject to the approval of the Secretary of State, the Commission may appoint for any locality a panel for the purposes of this section consisting of such number of persons, not exceeding nine, as they consider appropriate, one of whom shall act as chairman.
- (2) Before making an appointment under subsection (1) above, the Commission may afford to such persons or organisations as they think fit an opportunity to suggest the name of any person who would in their view be an appropriate person for such an appointment.
- (3) Where the Commission have sought suggestions as mentioned in subsection (2) above, they shall consider any such suggestions before making an appointment under subsection (1) above.
- (4) The Commission may appoint a member of the Commission or a member of the Commission's staff to act as observer to the panel for the purposes of—
  - (a) sitting with the panel at any meeting;
  - (b) taking part in their discussions; and
  - (c) informing the Commission of information arising during and decisions taken at such meetings.
- (5) An observer appointed under subsection (4) above shall not be a member of the panel.
- (6) The Commission may refer to any such panel any matter relating to the functions of the Commission, and it shall be the duty of the panel to advise the Commission on the matter.

## **PART II**

### CONSERVATION, CONTROL AND SUSTAINABLE MANAGEMENT OF DEER

#### *Close seasons*

#### **5 Close seasons**

- (1) The Secretary of State—

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- (a) shall, in relation to the female of every species of deer; and
  - (b) may, in relation to the male of any species of deer,by order fix a period in each year during which no person shall take or wilfully kill or injure any deer of the sex and species named in the order, and different periods may be so fixed in relation to different species and in relation to the male and female of any species.
- (2) Before making an order under subsection (1) above, the Secretary of State may consult such persons or organisations as he thinks fit, or may direct the Commission to carry out such consultation on his behalf.
- (3) Where the Secretary of State has directed the Commission to carry out consultation on his behalf under subsection (2) above, they shall—
  - (a) report the results of that consultation, and
  - (b) tender such advice as they may wish in relation to the making of an order under subsection (1) above,to him within such period as he may so direct.
- (4) Where the Secretary of State or the Commission have carried out consultation under subsection (2) or (3) above the Secretary of State shall have regard to the results of that consultation, and to any advice tendered by the Commission under subsection (3) above, before making an order under subsection (1) above.
- (5) Subject to sections 14 and 25 of this Act and to subsections (6) and (7) below, any person who contravenes an order made under subsection (1) above shall be guilty of an offence.
- (6) Without prejudice to section 26, and subject to section 37, of this Act, and notwithstanding anything in any agreement between an occupier of land and the owner thereof, the Commission may authorise the owner or the occupier of any land or any person nominated in writing by either of them to take or kill, and to sell or otherwise dispose of, any deer found on that land during the period specified in relation to that sex and species of deer in an order under subsection (1) above, where they are satisfied that—
  - (a) the taking or killing is necessary—
    - (i) to prevent serious damage to any unenclosed woodland which forms part of that land, or serious damage, whether direct or indirect, to the natural heritage generally; or
    - (ii) in the interests of public safety; and
  - (b) no other means of control which might reasonably be adopted in the circumstances would be adequate.
- (7) Subject to section 37 of this Act, the Commission may, for any scientific purpose, authorise any person to take or kill deer during the period specified in relation to that sex and species of deer in an order under subsection (1) above.

### *Control agreements and control schemes*

## **6 Control areas**

In this Act the area to which a control agreement or a control scheme relates is, in relation to that agreement or, as the case may be, scheme, referred to as the “control area”.

## **7 Control agreements**

- (1) Subject to the following provisions of this section, where the Commission are satisfied that, on any land, deer—
  - (a) have caused, are causing, or are likely to cause—
    - (i) damage to woodland, to agricultural production, including any crops or foodstuffs, or, whether directly or indirectly, to the natural heritage generally; or
    - (ii) injury to livestock, whether by serious overgrazing of pastures, competing with any such livestock for supplementary feeding, or otherwise; or
  - (b) have become a danger or a potential danger to public safety,  
and that for the prevention of further such damage, injury or, as the case may be, danger or potential danger, the deer in that locality should be reduced in number, they shall form a preliminary view, having due regard to the nature and character of the land in question, as to what measures should be taken for that reduction in number; and, for the purposes of this section and section 8 of this Act, “measures” includes the taking and removal of deer.
- (2) For the purposes of subsection (1) above “the natural heritage” includes any alteration or enhancement of the natural heritage which is taking place, or is proposed to take place, either naturally or as a result of a change of use determined by the owner or occupier of the land in question; and “damage” shall be construed accordingly.
- (3) Where it appears to the Commission that the circumstances obtaining in a particular area require the complete exclusion of all deer, or of all deer of any species, from that area, they may form the view that any deer within that area should be taken, removed or killed.
- (4) After they have formed—
  - (a) the preliminary view mentioned in subsection (1) above; or
  - (b) the view mentioned in subsection (3) above,the Commission shall consult with such owners or occupiers of land as the Commission consider to be substantially interested, to secure agreement—
  - (i) that measures require to be taken;
  - (ii) as to what measures require to be taken, and within what time limit;
  - (iii) as to who is to carry out such measures; and
  - (iv) as to any other matters which appear to the Commission to be necessary for the purposes of such an agreement.
- (5) Where agreement is reached on the matters mentioned in subsection (4) above the Commission shall draw up an agreement (a “control agreement”) specifying the parties to it, and any such control agreement may—

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- (a) describe the control area by reference to a map and specify the approximate extent of that area;
- (b) specify the measures which are to be taken in relation to the deer in that area or any part of it;
- (c) specify, where the deer are to be reduced in number, the number and, if necessary in the opinion of the Commission, the species, sex and class, of the deer to be killed in or taken and removed from the control area or any part of it, and the limit on the number of deer of each species, sex or class to be allowed to be established in the control area or any part of it;
- (d) specify the measures which are to be taken by the owners or occupiers for the time being of land in the control area or any of them for the purposes of the agreement; and
- (e) set out the time limits within which the owners or occupiers are to take any such measures,

and the Commission shall send a copy of the control agreement to all the persons who were involved in the consultation referred to in subsection (4) above.

- (6) The Commission and any of the parties to a control agreement may agree at any time to vary its terms.

## 8 Control schemes

- (1) Where the Commission are satisfied—

- (a) that—

- (i) it is not possible to secure a control agreement; or
- (ii) that a control agreement is not being carried out;

and

- (b) that—

- (i) deer have caused and are causing serious damage to woodland or to agricultural production, including crops and foodstuffs, or serious damage, whether directly or indirectly, to the natural heritage, or serious injury to livestock, however caused, or have become and remain a danger to public safety; and
- (ii) action is necessary to prevent such serious damage, serious injury, or danger,

they shall make a scheme (a “control scheme”) for the carrying out of such measures as they consider necessary for the purposes mentioned in subsection (1) or, as the case may be, subsection (3) of section 7 of this Act.

- (2) Subsection (1) above does not apply in relation to any control agreement proposed or entered into for the purpose of altering or enhancing the natural heritage.

- (3) A control scheme shall—

- (a) describe the control area by reference to a map and specify the approximate extent of that area;
- (b) specify the measures which are to be taken in relation to the deer in that area or any part of it;
- (c) specify, where the deer are to be reduced in number, the number and, if necessary in the opinion of the Commission, the species, sex and class, of the deer to be killed in or taken and removed from the control area or any part

- of it, and the limit on the number of deer of each species, sex or class to be allowed to be established in the control area or any part of it;
- (d) specify the measures which are to be taken by the owners or occupiers for the time being of land in the control area or any of them for the purposes of paragraphs (a) to (c) above;
  - (e) prescribe time limits within which the owners or occupiers are to take any such measures as are mentioned in paragraph (d) above;
  - (f) include any incidental, consequential or supplemental provisions that may be necessary.
- (4) A control scheme may specify different measures to be taken by different owners or occupiers of land in the control area, and may provide for the extension of any time limit prescribed therein.
- (5) Nothing in subsection (3) or (4) above shall empower the Commission to impose on any owner or occupier of land a requirement to construct a fence on his land or on any part of it against the movement of deer, and for the purposes of this section “fence” shall include any artificial obstruction.
- (6) A control scheme shall require confirmation by the Secretary of State before it comes into operation; and Schedule 2 to this Act (which makes provision in relation to the making, confirmation, variation and revocation of control schemes) shall have effect.
- (7) Where any control scheme has been confirmed, every owner or occupier shall take such measures as the scheme may require of him in accordance with its provisions.
- (8) Where the Commission are of the opinion that any owner or occupier of land has failed to comply with subsection (7) above, they shall carry out the requirement, if they are satisfied that it is still necessary to do so; and where the carrying out of such a requirement involves the killing or taking of deer, the Commission shall have power to dispose by sale or otherwise of any deer so killed or taken.

## **9 Recovery of expenses incurred in fulfilment of control scheme**

- (1) Where any expenses incurred by the Commission in the performance of their duty under section 8(8) of this Act exceed the amount of the proceeds of the sale of any deer killed or taken in pursuance of that performance, the excess shall be recoverable by them from the owner or occupier concerned.
- (2) The Commission shall furnish to any owner or occupier concerned a statement showing—
- (a) the expenses incurred in the performance of their duty under the said section 8(8);
  - (b) the amount received in respect of the sale of deer; and
  - (c) the amount recoverable from any owner or occupier under this section.
- (3) Any owner or occupier who is aggrieved by a statement under subsection (2) above may, within one month of the statement having been furnished to him, appeal to the Scottish Land Court.
- (4) On an appeal under subsection (3) above, the Scottish Land Court may, if it appears to them to be equitable to do so, vary the amount recoverable from the appellant.
- (5) Subject to the approval of the Secretary of State, the Commission may, in any particular case, waive their right to any expenses recoverable under this section.

### *Emergency measures*

#### **10 Emergency measures to prevent damage by deer**

- (1) This subsection applies where the Commission are satisfied—
- (a) that deer—
    - (i) are causing serious damage to woodland or to agricultural production, including any crops or foodstuffs; or
    - (ii) are causing injury to livestock, whether by serious overgrazing of pastures, competing with any such livestock for supplementary feeding, or otherwise; or
    - (iii) constitute a danger or a potential danger to public safety;
  - (b) that none of their other powers is adequate to deal with the situation; and
  - (c) that the killing of the deer is necessary to prevent further such damage or injury or to remove the danger or potential danger.
- (2) Where subsection (1) applies and the Commission are satisfied that—
- (a) the deer mentioned in that subsection come from particular land; and
  - (b) any person having the right to kill deer on that land will forthwith undertake the killing of the deer so mentioned,
- the Commission shall make a request in writing to that person to that effect.
- (3) Where a request under subsection (2) above has been made to a person, the Commission shall not issue an authorisation under subsection (4) below unless it appears to them that he has become unable or unwilling to comply with the terms of the request.
- (4) Subject to subsection (3) above, where subsection (1) above applies the Commission shall authorise in writing, subject to such conditions as may be specified in the authorisation, any person who in their opinion is competent to do so to follow and kill on such land as may be mentioned in the authorisation such deer as appear to that person to be causing the damage or injury or constituting the danger or potential danger.
- (5) Where, as mentioned in paragraph (a)(iii) of subsection (1) above, deer constitute a danger or potential danger to public safety, and, in the opinion of the Commission or the person authorised by them under subsection (4) above, the killing of the deer would itself constitute a potential danger to public safety, the person so authorised by the Commission shall instead take and remove the deer from the land in question by such means as are appropriate.
- (6) An authorisation under subsection (4) above shall remain in force from the date on which it is issued for such period, not exceeding twenty eight days, as may be specified in the authorisation.
- (7) Where the Commission—
- (a) intend to issue an authorisation under subsection (4) above; and
  - (b) are of the opinion that any person is likely to be on any land to be mentioned in that authorisation,
- they shall as soon as practicable give to that person such warning of their intention as they consider necessary to prevent danger to him.



- (8) The Commission shall give to the owner of any land which is to be mentioned in an authorisation under subsection (4) above such notice of their intention to issue such an authorisation as may be practicable.
- (9) Without prejudice to section 16 of this Act, any notice to be served under subsection (7) or (8) above on an owner of land shall, where an agent or employee is responsible for the management or farming of the land, be duly served if it is served on the said agent or employee.
- (10) Where any deer has been killed or taken and removed from land under an authorisation granted by the Commission under subsection (4) above, the Commission shall have power to dispose of it by sale or otherwise.

## **11 Application of section 10 in relation to the natural heritage**

Section 10 of this Act shall apply in relation to the natural heritage as it applies to woodland, where the Commission are satisfied that deer are causing serious damage to the natural heritage—

- (a) on enclosed land; or
- (b) on unenclosed land, but only if the Commission are also satisfied that the damage is being caused by reason of the presence on the land in question of a significantly higher density of deer population than is usual in all the circumstances.

*Control agreements, control schemes and emergency measures: supplementary provisions*

## **12 Power of Commission to provide services and equipment and to make certain payments**

- (1) The Commission may by agreement with any owner or occupier of land assist in or undertake, whether in pursuance of a control agreement, a control scheme or otherwise—
  - (a) the taking or killing of deer; and
  - (b) the disposal of deer or their carcasses.
- (2) An agreement under subsection (1) above may make provision for the providing of equipment by the Commission.
- (3) An agreement under subsection (1) above shall, unless the Commission with the approval of the Secretary of State otherwise decide, make provision for the payment of any expenses incurred by the Commission under the agreement.
- (4) The Commission may make in respect of the services of any person, who is not a member of staff of the Commission, authorised by them under section 10 of this Act such payment as may be agreed.

## **13 Offences in relation to Part II**

- (1) Any person who refuses or wilfully fails to comply with any requirement laid upon him by a control scheme shall be guilty of an offence.

- (2) A person who wilfully obstructs any person acting in the execution of this Part of this Act or of any authorisation issued under this Part, other than an authorisation under subsection (6) or (7) of section 5 of this Act, shall be guilty of an offence.

#### **14 Limitation of criminal liability**

- (1) Subject to subsections (2) to (4) below, where a person performs an act at the request of or under the authority of the Commission in pursuance of—
- (a) a control agreement;
  - (b) a control scheme; or
  - (c) section 10 of this Act,
- he shall not by reason of that act be liable to be proceeded against under this Act.
- (2) Where the act is performed by a member of the staff of the Commission in pursuance of section 10 of this Act, he shall be liable to be proceeded against if the act constitutes an offence under section 17(3) of this Act.
- (3) Where the act is performed by—
- (a) a member of the staff of the Commission in pursuance of a control agreement or control scheme; or
  - (b) any other person in pursuance of a control agreement, a control scheme or section 10 of this Act,
- he shall be liable to be proceeded against if the act constitutes an offence under either section 17(3) or section 18(1) of this Act.
- (4) In subsections (2) and (3)(a) above, “member of the staff of the Commission” includes any person engaged by the Commission under a contract for services.

#### **15 Power to enter on land**

- (1) For the purpose of the exercise of any of the functions of the Commission under section 10 of this Act, any person duly authorised in writing by the Commission shall have power at all reasonable times to enter upon any land.
- (2) A person authorised in writing by the Commission for the purposes mentioned in subsection (3) below shall have power at all reasonable times to enter upon any land where—
- (a) notice has been given to the owner and to the occupier of the land that it is proposed to enter during a period specified in the notice, not exceeding one month beginning at least fourteen days after the giving of the notice; and
  - (b) the exercise of that power takes place within the period so specified.
- (3) The purposes for which a person may be authorised by the Commission are—
- (a) the taking of a census of deer in any area in pursuance of their functions under section 1(1) of this Act;
  - (b) the determination of whether any of their functions under section 7 or 8 of this Act should be exercised;
  - (c) the exercise of any such function under the said section 7 or 8;
  - (d) the determination of how far and in what manner any requirement placed on any person by virtue of this Part of this Act has been complied with.

- (4) Any person who proposes to exercise any power of entry conferred by this section shall, if so required, produce the written document authorising him for such purpose.

## **16 Service of notices**

- (1) Subject to the provisions of this section, any notice for the purposes of this Act shall be in writing, and any notice or other document required or authorised by or under this Act to be given to or served on any person shall be duly given or served if it is delivered to him or left at his proper address or sent to him by post.
- (2) Any such notice or other document required or authorised to be served on any person for the purposes of this Act shall be duly served, if that person is an incorporated company or body, if it is served on the clerk or secretary of that company or body.
- (3) For the purposes of this section and section 7 of the Interpretation Act 1978, the proper address of any person on whom any such notice or document is to be served shall, in the case of the clerk or secretary of any incorporated company or body, be that of the registered or principal office of such company or body, and in any other case be the last known address of the person in question.
- (4) Where any notice or other document is to be given to or served on a person as being the person having any interest in land and it is not practicable after reasonable inquiry to ascertain his name or address, the notice or document may be given or served by addressing it to him by the description of the person having that interest in the land (naming it) and delivering the notice or document to some responsible person on the land or by affixing it, or a copy of it, to some conspicuous object on the land.
- (5) Nothing in this section shall require the Commission to give written notice of their intention to issue an authorisation in pursuance of section 10 of this Act.

## **PART III**

### **OFFENCES IN RELATION TO DEER**

## **17 Unlawful killing, taking and injuring of deer**

- (1) Subject to section 25 of this Act, any person who, without legal right to take or kill deer or without permission from a person having such right, takes or wilfully kills or injures deer on any land shall be guilty of an offence.
- (2) Subject to section 25 of this Act, any person who, without legal right to take or kill deer on any land or without permission from a person having such right, removes any deer carcase from that land shall be guilty of an offence.
- (3) Subject to section 25 of this Act, any person who wilfully kills or injures any deer otherwise than by shooting shall be guilty of an offence.
- (4) In subsection (3) above “shooting” means discharging a firearm of a class prescribed in an order under section 21(1) of this Act.

## **18 Taking or killing at night**

- (1) Subject to sections 25 and 41(2) of this Act and to subsection (2) below, any person who takes or wilfully kills or injures deer between the expiration of the first hour after sunset and the commencement of the last hour before sunrise shall be guilty of an offence.
- (2) Notwithstanding anything contained in any agreement between the occupier of agricultural land or of woodland and the owner thereof, but subject to section 37 of this Act, the Commission may authorise such an occupier or any person nominated in writing by such an occupier to take or kill, and to sell or otherwise dispose of, any deer on any such land or woodland during the period specified in subsection (1) above, where they are satisfied that—
  - (a) the taking or killing is necessary to prevent serious damage to crops, pasture, human or animal foodstuffs, or to woodland; and
  - (b) no other means of control which might reasonably be adopted in the circumstances would be adequate.

## **19 Use of vehicles to drive deer**

- (1) Subject to section 41(2) of this Act and to subsection (2) below, any person who uses a vehicle to drive deer on any land with the intention of taking, killing or injuring them shall be guilty of an offence.
- (2) Subject to section 37 of this Act, the Commission may authorise the owner of any land which deer are on, or any person nominated in writing by him, to use any vehicle to drive deer in order to take or kill them for the purposes of deer management.
- (3) In subsection (2) above—
  - “deer management” does not include driving deer in the course of any sporting activity; and
  - “vehicle” does not include any aircraft or hovercraft.

## **20 Other offences connected with moving vehicles**

- (1) Subject to sections 25 and 41(2) of this Act and to subsection (2) below, any person who—
  - (a) discharges any firearm, or discharges or projects any missile, from any moving vehicle at any deer; or
  - (b) uses any aircraft for the purposes of transporting any live deer other than in the interior of the aircraft,shall be guilty of an offence.
- (2) Nothing in subsection (1)(b) above shall make unlawful anything done by, or under the supervision of, a veterinary surgeon or practitioner.
- (3) In subsection (2) above—
  - “veterinary practitioner” means a person who is for the time being registered in the supplementary register; and
  - “veterinary surgeon” means a person who is for the time being registered in the register of veterinary surgeons.

## **21 Firearms and ammunition**

- (1) The Secretary of State shall have power to make such order as he thinks fit regarding the classes of firearms, ammunition, sights and other equipment which may lawfully be used in connection with killing or taking deer, and the circumstances in which any class of firearms, ammunition, sights or other equipment may be so used.
- (2) Before making an order under subsection (1) above the Secretary of State shall consult any organisations which in his opinion represent persons likely to be interested in or affected by the order.
- (3) Any person who fails to comply with an order under subsection (1) above shall be guilty of an offence.
- (4) No order shall be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (5) Any person who uses any firearm or any ammunition for the purpose of wilfully injuring any deer shall be guilty of an offence.

## **22 Offences committed by more than one person**

Where two or more persons acting together do any act which would constitute an offence under any of sections 17 to 21 of this Act, every such person shall be guilty of an offence.

## **23 Illegal possession of deer**

- (1) A person who is in possession of a deer or of firearms or ammunition in circumstances which make it reasonable to infer that—
  - (a) he obtained the deer by committing a relevant offence; or
  - (b) he had used the firearm or ammunition for the purpose of committing a relevant offence; or
  - (c) he knew that—
    - (i) a relevant offence had been committed in relation to the deer; or
    - (ii) the firearm or ammunition had been used for the purpose of committing a relevant offence,shall be guilty of an offence.
- (2) It shall be a defence in proceedings for an offence under subsection (1) above for the accused to show that no relevant offence had been committed, or that he had no reason to believe that such an offence had been committed.
- (3) For the purposes of this section a “relevant offence” is an offence under any of sections 5 or 17 to 22 of this Act.
- (4) A person shall not be guilty of an offence under subsection (1) above in respect of anything done in good faith, including conduct which would otherwise constitute a relevant offence in relation to any deer, where what is done is done for purposes connected with the prevention or detection of crime or the investigation or treatment of disease.
- (5) It shall be lawful to convict a person charged under subsection (1) above on the evidence of one witness.

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

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## **24 Attempts to commit offences**

Without prejudice to the operation of section 294 of, and paragraph 10 of Schedule 3 to, the Criminal Procedure (Scotland) Act 1995, any person who—

- (a) attempts to commit; or
  - (b) does any act preparatory to the commission of,
- an offence under section 5(5) or this Part of this Act shall be guilty of an offence.

### *Exemption for certain acts*

## **25 Action intended to prevent suffering**

A person shall not be guilty of an offence against this Act or any order made under this Act in respect of any act done for the purpose of preventing suffering by—

- (a) an injured or diseased deer; or
- (b) by any deer calf, fawn or kid deprived, or about to be deprived, of its mother.

## **26 Right of occupier in respect of deer causing serious damage to crops etc. on certain ground**

(1) Notwithstanding anything contained in section 5 of this Act, it shall be lawful for a person to whom this subsection applies to take or kill, and to sell or otherwise dispose of, any deer found, as the case may be, on—

- (a) arable land, improved permanent pasture (other than moorland) and land which has been regenerated so as to be able to make a significant contribution to the productivity of a holding which forms part of that agricultural land; or
- (b) on enclosed woodland,

where the occupier has reasonable ground for believing that serious damage will be caused to crops, pasture or human or animal foodstuffs on that agricultural land, or to that woodland, if the deer are not taken or killed.

(2) Subsection (1) above applies to the occupier in person and, if duly authorised in writing by the occupier for the purposes of that subsection, to any of—

- (a) the owner in person;
- (b) the owner's employees;
- (c) the occupier's employees, or any other person normally resident, on the land;
- (d) any other person approved in writing by the Commission as a fit and competent person for the purpose.

(3) Nothing contained in any agreement between an occupier of agricultural land or enclosed woodland and the owner of that land shall prohibit any act made lawful by subsection (1) above.

(4) Any authority given to a person under subsection (2) above shall expire—

- (a) at the end of such period as the occupier may specify in it;
- (b) when a person to whom it was given under paragraphs (b) or (c) of that subsection ceases to be in the employment of the owner or, as the case may be, the occupier, or ceases to be normally resident on the land;
- (c) when a person to whom it was given under paragraph (d) of that subsection ceases to be so approved;

- (d) if the occupier revokes it.

## **PART IV**

### **ENFORCEMENT, LICENSING OF VENISON DEALING AND MISCELLANEOUS PROVISIONS**

#### *Enforcement*

#### **27 Powers of search and seizure**

- (1) A constable may seize any deer liable to be forfeited on conviction of an offence under this Act.
- (2) Where a sheriff or any justice of the peace is satisfied by information on oath that—
- (a) there is reasonable ground to suspect a relevant offence to have been committed; and
  - (b) evidence of the commission of the offence is to be found on any premises or in any vehicle,
- he may grant a warrant authorising any constable at any time or times within one week of the date of such warrant to enter, if necessary by force, the said premises and every part thereof or the said vehicle for the purpose of detecting the offence.
- (3) A constable authorised by a warrant granted under subsection (2) above may—
- (a) search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter the premises or, as the case may be, vehicle to which the warrant relates; and
  - (b) seize any article found on the premises, or in the vehicle, or on any such person which he has reasonable grounds for believing to be evidence of the commission of a relevant offence.
- (4) Where a constable has reasonable grounds to—
- (a) suspect that—
    - (i) a relevant offence has been committed; and
    - (ii) evidence of the commission of the offence is to be found in any vehicle; and
  - (b) believe that by reason of urgency or other good cause it is impracticable to apply for a warrant to search such a vehicle,
- he may stop and search that vehicle, and may exercise the same power of search and seizure in relation to it as might be conferred under subsection (2) above by a warrant of the sheriff or of a justice of the peace.
- (5) In subsections (2) to (4) above, a “relevant offence” is an offence under Part III, or under section 36(1) or (4), of this Act.
- (6) No search of a female person shall be carried out in pursuance of any search authorised by this section except by a female person.

#### **28 Power of arrest**

Where any person is found committing an offence under Part III of this Act, any constable may arrest that person.

## **29 Offences by bodies corporate**

Where an offence under this Act has been committed by a body corporate 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, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in such capacity, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## **30 Power of court on trial for one offence to convict of another**

If, upon a trial for an offence under any of sections 5, 17, 18, 19, 20, 21, 22 or 23 of this Act, or any rule of law relating to reset, the court is—

- (a) not satisfied that the accused is guilty of the offence charged, but
- (b) satisfied that he is guilty of another of those offences,

it may acquit him of the offence charged but find him guilty of the other offence and he shall then be liable to the same punishment as for that other offence.

## **31 Powers of court on conviction for offences**

- (1) Where a person is convicted of an offence under an enactment specified in column 1 and described in column 2 of the Table set out in Schedule 3 to this Act, he shall be liable—
  - (a) on summary conviction, to a penalty not exceeding the maximum penalty set out in column 3(a) of that Table in relation to that offence; and
  - (b) on conviction on indictment, to a penalty not exceeding the maximum set out in column 3(b) of that Table in relation to that offence.
- (2) Where a person is convicted of an offence under any of sections 17 to 23 of this Act, the court shall have power (in addition to any other power) to cancel any firearm or shotgun certificate held by him.
- (3) Where a court cancels a firearm or shotgun certificate under subsection (2) above—
  - (a) the court shall cause notice in writing of that fact to be sent to the chief constable by whom the certificate was granted;
  - (b) the chief constable shall by notice in writing require the holder of the certificate to surrender it; and
  - (c) if the holder of the certificate fails to surrender the certificate within twenty one days from the date of that requirement, he shall be guilty of an offence.
- (4) Where a person is convicted of an offence under any of sections 5(5), 17(1), (2) or (3), 18(1), 20(1), 22 or 23(1) of this Act, he shall be liable to the forfeiture of any deer illegally taken, killed or removed by him or in his possession at the time of the offence.
- (5) Where a person is convicted of an offence under Part III or section 36 of this Act, the court shall have power to disqualify him from holding or obtaining a licence under section 33 of this Act.

## **32 Disposal of deer liable to forfeiture**

- (1) Where any deer seized under section 27(1) of this Act is liable to forfeiture the person by whom it is seized may sell it and the net proceeds of the sale shall be liable to forfeiture in the same manner as the deer sold.



- (2) A person shall not be subject to any liability on account of his neglect or failure to exercise the power conferred on him by subsection (1) above.

*Licensing of dealing in venison*

**33 Licences to deal in venison**

- (1) A council may grant to any person whom they shall think fit a licence to deal in venison (which shall continue to be known as a “venison dealer’s licence”).
- (2) The Secretary of State shall have power by order to regulate—
- (a) applications for venison dealers' licences and the manner in which they are to be dealt with (including power to authorise councils to charge fees in respect of such applications); and
  - (b) the procedure—
    - (i) by which venison dealers' licences may be surrendered; and
    - (ii) for handing in of licences where a court has ordered their forfeiture or the holders have ceased to deal in venison.
- (3) The Secretary of State may in regulations under subsection (2) above apply any provision of Schedule 1 to the Civic Government (Scotland) Act 1982, as he thinks fit.
- (4) A venison dealer’s licence shall be valid for three years (unless the dealer has been disqualified from holding a licence by reason of his conviction of an offence under this Act), and may be renewed provided he is not at the time of the application subject to such disqualification.
- (5) Every council which grants a venison dealer’s licence shall cause to be sent to the Commission as soon as may be a copy of the licence.
- (6) Every council by whom venison dealers' licences are granted shall as soon as may be after the first day of January in each year make a return to the Commission of the names and addresses of the persons who on that day held venison dealer’s licences issued by the council.
- (7) In this section and sections 34 to 36 “venison” means the carcase or any edible part of the carcase of a deer, and “deer” means deer of any species, whether or not deer within the meaning of section 45 of this Act, and includes farmed deer.
- (8) In this section and section 36 of this Act “council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

**34 Records kept by venison dealers**

- (1) Every licensed venison dealer shall keep a book in which shall be entered records in the prescribed form of all purchases and receipts of venison by him and shall enter in such book forthwith the prescribed particulars of such purchases and receipts.
- (2) Any person authorised in writing in that behalf by the Secretary of State or by the Commission (an “authorised person”) or any constable, may inspect any book kept in pursuance of subsection (1) above.
- (3) An authorised person shall show his written authority when so requested.

- (4) A licensed venison dealer shall produce for inspection by an authorised person or constable—
- (a) any book kept in pursuance of subsection (1) above;
  - (b) all invoices, consignment notes, receipts and other documents (including copies of them where the originals are not available) which may be required to verify any entry in such book; and
  - (c) all venison in his possession or under his control, or on premises or in vehicles under his control,
- and shall allow the authorised person or constable to take copies of such book or document or extracts therefrom.
- (5) Every book kept in pursuance of subsection (1) above shall be kept until the end of the period of three years beginning with the day on which the last entry was made in the book and any such documents as are mentioned in subsection (4)(b) above shall be kept for a period of three years beginning with the date of the entry to which they refer.
- (6) In this section “prescribed” means prescribed by order.

### **35 Reciprocal arrangements**

A licensed venison dealer who has purchased or received venison from another licensed venison dealer or from a licensed game dealer within the meaning of section 10(5) of the Deer Act 1991 shall be deemed to have complied with the requirements of section 34 of this Act if he has recorded in his book kept in pursuance of subsection (1) of that section—

- (a) that the venison was so purchased or received;
- (b) the name and address of the other licensed venison dealer or of the licensed game dealer;
- (c) the date when the venison was so purchased or received;
- (d) the number of carcasses and sex of the venison; and
- (e) the species of deer, provided that it is possible to identify it.

### **36 Offences in connection with venison dealing**

- (1) Subject to subsection (2) below, any person who—
- (a) sells, offers or exposes for sale; or
  - (b) has in his possession, transports or causes to be transported for the purpose of sale at any premises,
- any venison shall be guilty of an offence.
- (2) A person is not guilty of an offence under subsection (1) above if—
- (a) he is a licensed venison dealer; or
  - (b) he does the act constituting the offence for the purpose of selling to a licensed venison dealer; or
  - (c) he has purchased the venison from a licensed venison dealer.
- (3) In subsection (2) above “licensed venison dealer” means the holder of a venison dealer’s licence granted by the council within whose area the sale, offer or exposure for sale takes place, or where the premises concerned are situated.
- (4) Any person who—

- (a) sells, offers or exposes for sale;
  - (b) has in his possession for the purpose of sale at any premises;
  - (c) transports for the purpose of sale; or
  - (d) purchases or offers to purchase or receives,  
the carcase of a deer, or any part of such a carcase, which he knows or has reason to believe has been killed unlawfully shall be guilty of an offence.
- (5) Any licensed venison dealer who fails to comply with any provision of section 34 of this Act or who knowingly or recklessly makes in any book or document he is required to keep under that section an entry which is false or misleading in any material particular shall be guilty of an offence.
- (6) Any person who obstructs an authorised person or a constable making an inspection under section 34 of this Act shall be guilty of an offence.
- (7) In this section “sale” includes barter, exchange and other transactions by which venison is disposed of for value.

#### *Further powers of the Commission*

### **37 Restrictions on granting of certain authorisations**

- (1) The Commission shall not grant an authorisation under any of sections 5(6) or (7), 18(2) or 19(2) of this Act (in subsections (2) to (5) below referred to as an “authorisation”) unless they are satisfied that the person concerned is a fit and competent person to receive an authorisation under that provision.
- (2) An authorisation shall—
- (a) be in writing; and
  - (b) specify the duration of its validity.
- (3) No authorisation shall be granted under section 18(2) or 19(2) of this Act unless a relevant code of practice has been published under subsection (5) below, and any such authorisation shall contain a condition that the person concerned shall comply with the relevant provisions of any such code.
- (4) An authorisation may contain such conditions, other than that mentioned in subsection (3) above, as the Commission think fit.
- (5) The Commission shall prepare and publish, and from time to time revise, a code of practice for—
- (a) night shooting; and
  - (b) the use of vehicles for the purposes of deer management, within the meaning of section 19(2) of this Act,
- to which they shall have regard when exercising their power under section 18(2) or, as the case may be, section 19(2) of this Act.

### **38 Limitation on requirement to obtain game licence**

Any person authorised or required by the Commission to kill any deer under this Act shall not be required to obtain for that purpose a licence to kill game.

**39 Deer killed under the authority of the Commission**

Without prejudice to sections 8(8), 9, 10(10) and 12(1) of this Act, the Commission shall have no power to dispose of deer taken or killed under their authority.

**40 Power of Commission to require return of number of deer killed**

- (1) The Commission may, for the purposes of any of their functions, by notice served on the owner or occupier of any land require him to make a return, in such form as the Commission may require, showing the number of deer of each species and of each sex which to his knowledge have been taken or killed on the land.
- (2) A notice served under subsection (1) above shall—
  - (a) be in writing;
  - (b) specify a period, immediately preceding the date of service of the notice, for which the return must be completed.
- (3) A period specified by virtue of subsection (2)(b) above shall not exceed five years.
- (4) Any person on whom a notice under subsection (1) above has been served who—
  - (a) fails without reasonable cause to make the required return within thirty-six days after the service of the notice; or
  - (b) in making the return knowingly or recklessly furnishes any information which is false in a material particular,
 shall be guilty of an offence.

*Miscellaneous and general provisions*

**41 Savings for certain rights**

- (1) Nothing in Parts I or II (except section 5) of this Act or anything done thereunder shall preclude any occupier of any land from recovering any compensation for damage caused by deer which he would have been entitled to recover if this Act had not been passed.
- (2) Nothing in sections 18(1), 19(1) or 20(1)(a) of this Act shall be construed as prohibiting—
  - (a) a person having a legal right to take deer on any land; or
  - (b) a person having permission in writing from any such person as is mentioned in paragraph (a) above,
 from taking a deer on that land in any manner which does not cause it unnecessary suffering.

**42 Information to be supplied to owner of certain land**

The occupier of any agricultural land or enclosed or unenclosed woodland shall supply, as soon as practicable after being requested to do so by the owner of the land, information to the owner as to the number, sex and species of deer taken or killed by him or by any other person, other than the owner or his employees, authorised or nominated by him under or by virtue of section 5(6), 18(2) or 26(2) of this Act within the period of twelve months immediately preceding the request.

### **43 Application of Act to farmed deer**

- (1) Subject to subsections (2) to (4) below, this Act does not apply in respect of farmed deer.
- (2) The following provisions of this Act apply as respects farmed deer—
  - (a) subsections (3) and (4) of section 17;
  - (b) section 21;
  - (c) sections 33 to 36;
  - (d) section 45.
- (3) The provisions of sections 24 and 27 to 32 of this Act shall apply in respect of an offence committed by virtue of subsection (2) above.
- (4) In this section “farmed deer” means deer of any species which are on agricultural land enclosed by a deer-proof barrier and are kept on that land by any person as livestock.

### **44 Application of Act to the Crown**

- (1) This Act shall apply, subject to such modifications as may be prescribed, to land an interest in which belongs to Her Majesty in right of the Crown and land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.
- (2) In subsection (1) above, “prescribed” means prescribed in regulations made by the Secretary of State under this Act.

### **45 Interpretation**

- (1) In this Act, unless the context otherwise requires—
  - “agricultural land” has the meaning given by the Agricultural Holdings (Scotland) Act 1991;
  - “ammunition” and “firearm” have the meanings respectively given in the Firearms Act 1968;
  - “animal foodstuffs”, for the purposes of sections 18(2) and 26 of this Act, includes foodstuffs intended for consumption by farmed deer;
  - “control agreement” has the meaning given by section 7 of this Act;
  - “control area” has the meaning given by section 6 of this Act;
  - “control scheme” has the meaning given by section 8 of this Act;
  - “deer” means fallow deer, red deer, roe deer and sika deer and any other species of deer specified in an order made under subsection (2) below and includes any hybrid of those species and, where appropriate, the carcase of any deer or any part of it;
  - “deer management” includes the management of deer for sporting purposes;
  - “deer proof barrier” means a barrier which will, having regard to the character and nature of the land, prevent the entry of deer on to or, as the case may be, the escape of deer from any land;
  - “enclosed” means enclosed by a stock-proof fence or other barrier, and “unenclosed” shall be construed accordingly;
  - “fallow deer” means deer of the species *Dama dama*;

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“farmed deer” has the meaning given in section 43 of this Act;

“functions” includes powers and duties;

“land” does not include a dwelling house or any yard, garden, outhouses and pertinents belonging thereto or usually enjoyed therewith;

“livestock” has the meaning given by the Agriculture (Miscellaneous Provisions) Act 1968 and, for the purposes of sections 7, 8 and 10 of this Act, includes farmed deer;

“natural heritage” includes flora and fauna, geological and physiographical features and the natural beauty and amenity of the countryside;

“occupier” in relation to any land includes any tenant or sub-tenant, whether in actual occupation of the land or not;

“owner” in relation to any land includes any person who under the Land Clauses Acts would be enabled to sell and convey the land to promoters of an undertaking;

“red deer” means deer of the species *Cervus elaphus*;

“roe deer” means deer of the species *Capreolus capreolus*;

“sika deer” means deer of the species *Cervus nippon*;

“species” includes any hybrid of different species of deer;

“take”, in relation to deer, means take alive, and cognate expressions shall be construed accordingly;

“vehicle” includes an aircraft, hovercraft or boat; and

“woodland” means land on which trees are grown, whether or not commercially, and includes any such trees and any vegetation planted or growing naturally among such trees on that land.

- (2) The Secretary of State may, by order, specify other species of deer which are to be “deer” for the purposes of subsection (1) above.

#### **46 Financial provisions**

The expenses of the Commission shall be defrayed by the Secretary of State, and any sums received by them shall be paid to the Secretary of State.

#### **47 Orders, regulations etc**

- (1) Subject to section 21(4) of this Act, any order or regulations made under this Act shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution by either House of Parliament.
- (2) Any order made under this Act may be varied or revoked by a subsequent order made in the like manner.

#### **48 Short title, consequential amendments, repeals, extent and commencement**

- (1) This Act may be cited as the Deer (Scotland) Act 1996.
- (2) Schedule 4 (which makes provisions consequential on this Act) and Schedule 5 (which repeals provisions consolidated by this Act) shall have effect.
- (3) Subject to subsection (4) below, this Act shall extend to Scotland only.

- (4) The amendments contained in Schedule 4 and the repeals contained in Schedule 5 have the same extent as the enactments therein amended or, as the case may be, repealed.
- (5) Schedule 6 (which contains transitional and transitory provisions and a saving) shall have effect.
- (6) This Act shall come into force at the expiry of the period of one month beginning with the date on which the Deer (Amendment)(Scotland) Act 1996 comes into force.

## SCHEDULES

### SCHEDULE 1

Section 1(7).

#### DEER COMMISSION FOR SCOTLAND: SUPPLEMENTARY PROVISIONS

- 1       The Commission shall be a body corporate and shall have a common seal.
- 2       (1) Every member of the Commission shall hold and vacate office in accordance with the terms of the instrument under which he is appointed.
- (2) Notwithstanding anything in an instrument of appointment, any member of the Commission may resign his office by a notice given under his hand to the Secretary of State.
- (3) A member of the Commission who has ceased to hold office shall be eligible for re-appointment.
- 3       If the Secretary of State is satisfied that the chairman or a member of the Commission—
- (a) has had his estate sequestrated, has been adjudged bankrupt, has made an arrangement with his creditors, or has granted a trust deed for his creditors or has made a composition contract with his creditors;
  - (b) is incapacitated by reason of physical or mental illness;
  - (c) has been absent from meetings of the Commission for a period of more than three consecutive months without the permission of the Commission or of the Secretary of State; or
  - (d) is otherwise unable or unfit to discharge the functions of a member of the Commission, or is unsuitable to continue as chairman,
- the Secretary of State shall have power to remove him from his office.
- 4       Where a person ceases to be a member of the Commission otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may make to that person a payment of such amount as the Secretary of State may determine.
- 5       The Secretary of State may make such provision, if any, as he may determine for the payment of pensions to or in respect of members of the Commission.
- 6       The Secretary of State—
- (a) shall pay to—
    - (i) the chairman of the Commission such remuneration and such allowances; and
    - (ii) the other members of the Commission such allowances; and
  - (b) may pay to other member of the Commission such remuneration, as he may determine.



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- 7 The Commission may pay to the members of any panel appointed in pursuance of section 4 of this Act the like allowances as are payable by the Secretary of State to members of the Commission under paragraph 6 above.

*Meetings and proceedings of the Commission*

- 8 The quorum of the Commission shall be five or such larger number as the Commission may from time to time determine.
- 9 The proceedings of the Commission shall not be invalidated by—
- (a) any vacancy in the membership of the Commission; or
  - (b) any defect in the appoint of any member of the Commission.
- 10 If at any meeting of the Commission the votes are equally divided on any question, the person acting as chairman of the meeting shall have a second or casting vote.
- 11 Subject to paragraphs 8 to 10 above, the Commission shall have power to regulate their own procedure and that of any panel appointed by them.

*Office and staff of the Commission*

- 12 The Commission shall have an office at which communications and notices will be received.
- 13 The Secretary of State may provide the services of such staff as the Commission may require.

SCHEDULE 2

Section 8(6).

PROVISIONS AS TO CONTROL SCHEMES

**PART I**

PROCEDURE FOR MAKING CONTROL SCHEMES

- 1 Where the Commission decide to make a control scheme they shall—
- (a) serve on every owner and every occupier of land on whom the scheme proposes to impose any requirement—
    - (i) a copy of the said scheme, together with
    - (ii) a notice stating that any such owner or occupier may, within twenty-eight days of the service of the notice, object to the Secretary of State in such manner as may be specified in the notice to the scheme or to any provision contained in it; and
  - (b) publish in two successive weeks in the Edinburgh Gazette and in one or more newspapers circulating in the district in which the control area is situated a notice—
    - (i) stating that a control scheme has been prepared,
    - (ii) describing the control area,
    - (iii) naming a place within the district where a copy of the control scheme and of the map referred to in it may be inspected at all reasonable hours, and

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- (iv) stating that any person may, within twenty-eight days of the first publication of such notice, object to the Secretary of State in such a manner as may be specified in the notice to the control scheme or to any provision contained in it.
- 2 If no objection is duly made under paragraph 1 above or if all objections so made are withdrawn, the Secretary of State may confirm the control scheme either in the form submitted to him or, subject to paragraph 4 below, with modifications.
- 3 If any objection duly made under paragraph 1 above is not withdrawn, the Secretary of State shall, before deciding whether to confirm the control scheme, cause a public inquiry to be held, and after considering the objection and the report of the person who held the inquiry may confirm the scheme either in the form submitted to him or, subject to paragraph 4 below, with modifications.
- 4 A control scheme shall not be confirmed with any modification unless either—
- (a) every—
- (i) person served with a copy of the scheme by virtue of paragraph 1 above has been served with notice of the proposal to make the modification, and
- (ii) other person on whom the modification, if made, would impose a requirement, has been served with a notice of the proposal to make the modification along with a copy of the said scheme,
- and either has consented to it or has not, before the expiry of fourteen days from the service of the notice, notified the Secretary of State in writing that he objects to it; or
- (b) the modification arises from representations made at an inquiry held under paragraph 3 above or from the findings or recommendations of the person holding that inquiry, and every person in respect of whom the modification, if made, would vary or impose a requirement has been served with a copy of the scheme as mentioned in sub-paragraph (a) above and been afforded an opportunity to appear and be heard at the inquiry.

## PART II

### PROCEDURE FOR VARYING OR REVOKING CONTROL SCHEMES

- 5 On the application of the Commission, the Secretary of State may make a scheme varying a control scheme or may revoke a control scheme.
- 6 Before making any such variation or revocation the Secretary of State shall—
- (a) serve on every owner and every occupier of land on whom the control scheme has imposed any requirement or would, if varied as proposed, impose any requirement—
- (i) a draft of the scheme varying the control scheme or, as the case may be, an intimation of the proposed revocation, together with
- (ii) a notice stating that any such owner or occupier may, within twenty-eight days of the service of the draft scheme or the intimation, as the case may be, object to the Secretary of State in such a manner as may be specified in the notice to the variation or revocation of the control scheme; and

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- (b) publish in two successive weeks in the Edinburgh Gazette and in one or more newspapers circulating in the district in which the control area is situated a notice—
- (i) stating that the control scheme is to be varied or revoked, and
  - (ii) stating that any person may, within twenty-eight days of the first publication of such notice, object in such manner as may be specified in the notice to the making of the variation or revocation, and
  - (iii) naming, in the case of any such variation, a place within the district where a copy of the scheme as proposed to be varied and any map referred to in it may be inspected at all reasonable hours.
- 7 If no objection is duly made under paragraph 6 above or if all objections so made are withdrawn, the Secretary of State may vary or revoke the control scheme, as the case may be.
- 8 If any objection duly made under paragraph 6 above is not withdrawn, the Secretary of State shall, before deciding whether to make the variation or revocation as the case may be, cause a public inquiry to be held, and after considering the objection and the report of the person who held the inquiry may make the variation, either in the form of the draft or with modifications, or the revocation, as the case may be.
- 9 A variation of a control scheme shall not be made with any modification unless either—
- (a) every—
    - (i) person served with a copy of the draft scheme by virtue of paragraph 6 above has been served with notice of the proposal to make the modification, and
    - (ii) other person on whom the modification, if made, would impose a requirement has been served with a notice of the proposal to make the modification along with a copy of the said draft scheme,and either has consented to it or has not, before the expiry of fourteen days from the service of the notice, notified the Secretary of State in writing that he objects to it; or
  - (b) the modification arises from representations made at an inquiry held under paragraph 8 above or from the findings or recommendations of the person holding that inquiry, and every person in respect of whom the modification, if made, would vary or impose a requirement has been served with a copy of the draft scheme as mentioned in sub-paragraph (a) above and been afforded an opportunity to appear and be heard at the inquiry.

### PART III

#### GENERAL PROCEDURAL PROVISIONS

- 10 Notwithstanding anything in paragraphs 3 or 8 above, the Secretary of State may require any person who has made an objection to state in writing the grounds for it, and may disregard the objection for the purposes of this Schedule if he is satisfied that the objection is frivolous.
- 11 The provisions of subsection (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (which relate to the holding of local inquiries) shall apply in

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relation to a public local inquiry held under paragraph 3 or 8 above as they apply in relation to local inquiries held under the said section 210.

#### PART IV

##### PROVISIONS AS TO THE VALIDITY OF CONTROL SCHEMES AND OF VARIATIONS AND REVOCATIONS OF SUCH SCHEMES

- 12 On confirming a control scheme or on varying or revoking such a scheme the Secretary of State shall forthwith—
- (a) serve on every person on whom a notice was required to be served under any of the following provisions—
    - (i) sub-paragraph (a) of paragraph 1 above;
    - (ii) sub-paragraph (a) of paragraph 4 above;
    - (iii) sub-paragraph (a) of paragraph 6 above;
    - (iv) sub-paragraph (a) of paragraph 9 above,
 a notice stating that the scheme has been confirmed or, as the case may be, that a variation or revocation of such a scheme has been made;
  - (b) publish in the Edinburgh Gazette and in one or more newspapers circulating in the district in which the control area is situated a notice—
    - (i) stating that the scheme has been confirmed or varied or revoked, as the case may be, and
    - (ii) naming a place within the district where a copy of the scheme or, as the case may be, the scheme as varied, and of any maps referred to in the scheme, may be inspected at all reasonable hours.
- 13 (1) Subject to sub-paragraphs (2) and (3) below, a control scheme or any variation or revocation of such a scheme shall not at any time be questioned in any proceedings whatsoever.
- (2) Any person aggrieved by a control scheme or by any variation or revocation of such a scheme may apply, within six weeks from the date of the first publication of the notice referred to in sub-paragraph (b) of paragraph 12 above, to the Court of Session for the purpose of questioning its validity on the ground that—
- (a) it is not within the powers of this Act; or
  - (b) any requirement of this Act has not been complied with.
- (3) Where any such application is duly made the Court may, where it is satisfied that—
- (a) the scheme or any variation or revocation of such a scheme is not within the powers of this Act; or
  - (b) the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement of this Act,
- quash the scheme or any such variation or revocation, either generally or in so far as it affects the applicant.

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### SCHEDULE 3

#### PENALTIES

<i>Enactment</i>	<i>Offence</i>	<i>Penalty</i>	
		<i>(a) on summary conviction</i>	<i>(b) on conviction on indictment</i>
5(5)	Taking, killing or injuring deer in close season	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	
13(1)	Failure to comply with control scheme	a fine of level 4 on the standard scale or 3 months imprisonment or both	
13(2)	Obstruction of authorised person	a fine of level 3 on the standard scale or 3 months imprisonment or both	
17(1)	Poaching	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	
17(2)	Removal of deer carcase without right or permission	a fine of level 4 on the standard scale for each deer carcase in respect of which the offence is committed or 3 months imprisonment or both	
18(1)	Taking or killing at night	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	
19(1)	Use of vehicle to drive deer	a fine of level 4 on the standard scale or 3 months imprisonment or both	

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<i>Enactment</i>	<i>Offence</i>	<i>Penalty</i>	
		<i>(a) on summary conviction</i>	<i>(b) on conviction on indictment</i>
20(1)	Offences connected with use of vehicles and aircraft	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	
21(3), (5)	Offences relating to firearms and ammunition	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	
22	Unlawful killing, taking or injuring of deer or breach of firearms order by more than one person	a fine of the statutory maximum in respect of each deer killed, taken or injured or 6 months imprisonment or both	a fine or imprisonment for a term not exceeding 2 years or both
23(1)	Illegal possession of deer or firearms	a fine of level 4 on the standard scale or 3 months imprisonment or both	
24(a)	Attempting to commit certain offences	the same penalty as may be imposed in respect of the offence attempted.	
24(b)	Acts preparatory to the commission of certain offences	the same penalty as may be imposed for the offence, subject to a maximum of a fine not exceeding level 4 on the standard scale or 3 months imprisonment or both	
31(3)(c)	Failure to surrender cancelled firearm or shotgun certificate.	a fine of level 2 on the standard scale.	
36(1)	Unauthorised sale etc. of venison	a fine of level 3 on the standard scale	
36(4)	Sale etc. of unlawfully killed deer	a fine of level 4 on the standard	

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<i>Enactment</i>	<i>Offence</i>	<i>Penalty</i>	
		<i>(a) on summary conviction</i>	<i>(b) on conviction on indictment</i>
		scale or 3 months imprisonment or both	
36(5)	Failure to comply with section 34	a fine of level 2 on the standard scale	
36(6)	Obstruction of person carrying out inspection under section 34	a fine of level 3 on the standard scale	
40(4)	Failure to make, or making false, return of number of deer killed.	a fine of level 3 on the standard scale or 3 months imprisonment or both.	

#### SCHEDULE 4

Section 48(2).

##### CONSEQUENTIAL AMENDMENTS

##### *The Agriculture (Scotland) Act 1948 (c. 45)*

- 1 (1) The Agriculture (Scotland) Act 1948 shall be amended as follows.
  - (2) In section 39(3A) (exclusion of certain deer from provisions of that section), for the words “section 35A of the Deer (Scotland) Act 1959” there shall be substituted the words “section 45 of the Deer (Scotland) Act 1996”.
  - (3) In section 42A (definition of “animals for the purposes of sections 40 to 42”), for the words “section 35A of the Deer (Scotland) Act 1959” there shall be substituted the words “section 45 of the Deer (Scotland) Act 1996”.

##### *The Deer Act 1991 (c. 54)*

- 2 In section 11(3) of the Deer Act 1991 (details to be recorded where venison bought from a licensed dealer), for the words “Part IIIA of the Deer (Scotland) Act 1959” there shall be substituted the words “section 33 of the Deer (Scotland) Act 1996”.

#### SCHEDULE 5

Section 48(2).

##### REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1959 c. 40.	The Deer (Scotland) Act 1959.	The whole Act.

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1967 c. 37.	The Deer (Amendment) (Scotland) Act 1967.	The whole Act.
1973 c. 65.	The Local Government (Scotland) Act 1973.	In Schedule 27, paragraph 143.
1982 c. 19.	The Deer (Amendment) (Scotland) Act 1982.	The whole Act.
1991 c. 54.	The Deer Act 1991.	Section 17(5).
1996 c. 43.	The Deer (Amendment) (Scotland) Act 1996.	The whole Act.

## SCHEDULE 6

Section 48(5).

### TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS

#### *Transitional provision*

- 1 Where on the commencement of this Act a code has been published or falls to be treated as having been published under section 33A(11)(a) of the Deer (Scotland) Act 1959, that code shall be treated, after that commencement, as if it had been published under section 37(5)(a) of this Act.

#### *Transitory provisions*

- 2 Until an order in relation to red deer stags and hinds is made under section 5(1) of this Act, the period for the purposes of that subsection for—
- (a) such stags shall be the period commencing on the twenty first day of October and ending on the thirtieth day of June; and
  - (b) such hinds shall be the period commencing on the sixteenth day of February and ending on the twentieth day of October.
- 3 Until a code is published under section 37(5)(b) of this Act, section 19(1) of this Act shall have effect as if for the word “any” in the second place where it occurs, there is substituted the word “unenclosed”.

#### *Savings*

- 4 The amendments made by paragraphs 2 to 4 of Schedule 1 to the Deer (Amendment) (Scotland) Act 1996 shall not be affected by the repeal of that Act by this Act.

### TABLE OF DERIVATIONS

#### *Notes:*

- 1 This Table shows the derivation of the provisions of the Bill.
- 2 The following abbreviations are used in the Table:—



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

*Acts of Parliament*

1959	= Deer (Scotland) Act 1959 (c. 40)
1967	= Deer (Amendment) (Scotland) Act 1967 (c. 37)
1982	= Deer (Amendment) (Scotland) Act 1982 (c. 19)
1996	= Deer (Amendment) (Scotland) Act 1996 (c. 43)
<i>Provision</i>	<i>Derivation</i>
1(1)	1959 s. 1(1), substituted 1996 s.1(1).
(2)	1959 s. 1(1A), inserted 1996 s.1(1).
(3)	1959 s. 1(2).
(4)	1959 s. 1(3), amended 1996 s. 1(2).
(5)	1959 s. 1(3A), inserted 1996 s. 1(3).
(6)	1959 s. 1(3B), inserted 1996 s. 1(3).
(7)	1959 s. 1(6).
2	1959 s.3, amended 1982 s.1(1), 1996 s.13(1) and Schedule 1, para.1(3).
3	1959 s.4, substituted 1996 s. 3
4(1) to (3)	1959 s. 2(1) to (1B), inserted 1996 s.2
(4), (5)	1959 s.2(1), amended 1982 s.2(1)
(6)	1959 s.2(2)
5(1) to (5)	1959 s.21(1) to (4), (5) part, amended 1982 s.6, substituted 1996 s.8.
(6), (7)	1959 s.33A(5) and (6), inserted 1996 s.10(1).
6	1959 s.7(9), substituted 1996 s.6.
7	1959 s.7(1) to (6), substituted 1996 s.6
8	1959 s.7(7), (8) and (10), substituted 1996 s.6; 1959 s.8, amended 1982 s.1(2), 1996 s.13(1) and Schedule 1, paragraph 1(7); 1959 s.9(1); 1959 s.10, amended 1996 s.13(1) and Schedule 1, paragraph 1(9).
9	1959 s.11(1), amended 1982 s.1(2), substituted 1996 s.13(1) and Schedule 1, paragraph 1(10)(a); 1959 s.11(2), amended 1996 s.13(1) and Schedule 1, paragraph 1(10)(b); 1959 s.11(3).
10	1959 s.6(1) to (7),(9) amended 1982 s.3(b), 1996 s.13(1) and Schedule 1, paragraph 1(5)

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<i>Provision</i>	<i>Derivation</i>
	(a); subsection (1) substituted 1982 s.3(a), 1996 s.4(2); subsection (1A) inserted 1996 s.4(2); subsection (9) inserted 1996 s.4(3).
11	1959 s.6AA, inserted 1996 s.5.
12(1) to (3)	1959 s.12, amended 1982 s.1(2), 1996 s.13(1) and Schedule 1, paragraph 1(11), part repealed 1982 s.15(2) and Schedule 3.
(4)	1959 s.6(8), amended 1996 s.13(1) and Schedule 1, paragraph 1(5)(b).
13	1959 s.9(2) part; 1959 s.17 part.
14(1) to (4)	1959 s.33(2), repealed and replaced 1967 s.2(2), amended 1996, s.13(1) and Schedule 1, paragraph 1(30)(b).
15	1959 s.15, amended 1967 s.1, 1982 s.1(2), part repealed 1996 s.13, Schedule 1, paragraph 1(13) and Schedule 2.
16	1959 s.16, amended 1996 s.13(1) and Schedule 1, paragraph 1(14).
17(1),(2)	1959 s.22, amended 1982 ss.6(c), (d), 14(1) and Schedule 1, 1996 s.13(1) and Schedule 1, paragraph 1(18).
(3), (4)	1959 s.23(2), amended 1982 s.6(a), 1996 s.13(1) and Schedule 1, paragraph 1(19)(b).
18(1)	1959 s.23(1) 1982 s.6(d), 1996 s.13(1) and Schedule 1, paragraph 1(19)(a).
(2)	1959 s33A(2), inserted 1996 s.10(1).
19(1)	1959 s.23(3A), inserted 1982 s.9, amended 1996 s.13(1) and Schedule 1, paragraph 1(19) (e).
(2) to (3)	1959 s.33A(3), inserted 1996 s.10(1).
20	1959 s.23(2A) to (2C), inserted 1982 s.8(1), amended 1996 s.13(1) and Schedule 1, paragraph 1(19)(c).
21	1959 s.23A(1),(2), (3) part, (4) and (5) part, inserted 1982 s.10(1).
22	1959 s.24 part, amended 1982 s.10(2).
23	1959 s.25, substituted 1996 s.9.
24	1959 s.26, amended 1996 s.13(1) and Schedule 1, paragraph 1(25)(a) and (b).
25	1959 s.33(1), amended 1967 s.2(1), 1982 s.12, 1996 s.13(1) and Schedule 1, paragraph 1(30)(a).

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<i>Provision</i>	<i>Derivation</i>
26	1959 s.33(3), (3A), substituted 1967 s.2(2), 1982 s.13(1), amended 1996 s.13(1) and Schedule 1, paragraph 1(30)(c).
27	1959 s.27, amended 1982 ss.14(3), 15(1) and Schedule 2, paragraph 2; part repealed 1996 s.13, Schedule 1, paragraph 1(26) and Schedule 2.
28	1959 s.28
29	1959 s.31 part
30	1959 s.25AA, inserted 1996 s.9.
31(1)	
(2), (3)	1959 s.28A(1),(2)(a), (b) and (c) part, inserted 1982 s.15(1) and Schedule 2, paragraph 1.
(4)	1959 s.21(5), amended 1982 s.14(1) and Schedule 1; 1959 s.22(1) part; 1959 s.22(2) part, inserted 1982 s.6; s.23(3), amended 1982 s.14(1) and Schedule 1; 1959 s.24 part, amended 1982 s.14(1) and Schedule 1; 1959 s.25(1) part, substituted 1996 s.9.
(5)	1959 s.25D(7), inserted 1982 s.11.
32	1959 s.30
33	1959 s.25A, inserted 1982 s.11, amended Local Government etc. (Scotland) Act 1994 (c. 39) s.180 and Schedule 13, paragraph 53(1), (2); 1959 s.25F part, inserted 1982 s.11, amended Local Government etc. (Scotland) Act 1994 (c. 39) s.180 and Schedule 13 paragraph 53(1), (4), 1996 s.13(1) and Schedule 1, paragraph 1(24).
34	1959 s.25B, inserted 1982 s.11.
35	1959 s.25C, inserted 1982 s.11, amended Deer Act 1991 (c. 54) s.17(5).
36	1959 s.25D part, inserted 1982 s.11, amended Local Government etc. (Scotland) Act 1994 (c. 39) s.180 and Schedule 13, paragraph 53(1), (3); 1959 s.25F part, inserted 1982 s.11.
37	1959 s.33A(7) to (11), inserted 1996 s.10(1).
38	1959 s.14, amended 1982 s.1(2), part repealed 1996 s.13, Schedule 1, paragraph 1(12) and Schedule 2.
39	1959 s.13, substituted 1996 s.7.

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<i>Provision</i>	<i>Derivation</i>
40	1959 s.5(1), (2) part, amended 1982 ss.1(2), part repealed 1996 s.13, Schedule 1, paragraph 1(4) and Schedule 2.
41(1)	1959 s.19, amended 1982 s.1(2), part repealed 1996 s.13, Schedule 1, paragraph 1(16) and Schedule 2.
(2)	1959 s.23(5), part repealed 1996 s.13, Schedule 1, paragraph 1(19)(f) and Schedule 2.
42	1959 s.33B, inserted 1996 s.13(1) and Schedule 1, paragraph 1(31).
43	1959 s.34A, inserted 1996 s.11.
44	1959 s.34.
45	1959 s.35A, inserted 1996 s.12.
46	1959 s.18(1).
47	1959, s.35, amended 1982 s.15(1) and Schedule 2, paragraph 3.
Schedule 1	1959 Schedule 1, part repealed House of Commons Disqualification Act 1975 s.10 and Schedule 3 and Requirements of Writing (Scotland) Act 1995 s.14(2) and Schedule 5, amended 1982 s.5 and 1996 s.13(1) and Schedule 1, paragraph 1(32).
Schedule 2	1959 Schedule 2, amended Local Government (Scotland) Act 1973 s.214 and Schedule 27, paragraph 143.
Schedule 3	1959 s.5(2) part, amended 1982 s.14(1) and Schedule 1, 1996 s.13(1) and Schedule 1, paragraph 1(4)(b); 1959 s.9(2) part, amended 1982 s.14(1) and Schedule 1, 1996 s.13(1) and Schedule 1, paragraph 1(8); 1959 s.17 part, amended 1982 s.14(1) and Schedule 1, 1996 s.13(1) and Schedule 1, paragraph 1(15); 1959 s.21(5) part, amended 1982 s.14(1) and Schedule 1, substituted 1996 s.7; 1959 22(1) part, (2) part, amended 1982 s.14(1) and Schedule 1, 1996 s.13(1) and Schedule 1, paragraph 1(18)(c); 1959 s.23(3) part, amended 1982 ss.8(2), 14(1) and Schedule 1, 1996 s.13(1) and Schedule 1, paragraph 1(19)(d); 1959 s.23(3A) part, inserted 1982 s.9, amended 1996 s.13(1) and Schedule 1, paragraph 1(19)(e)(iii); 1959 s.23A(3) part, (5) part, inserted 1982 s.10(1), amended 1996 s.13(1) and Schedule 1, paragraph 1(20); 1959 s.24(a) part, (b) part,

<i>Provision</i>	<i>Derivation</i>
	amended 1982 s.14(1) and Schedule 1, 1996 s.13(1) and Schedule 1, paragraph 1(21); 1959, s.25(1) part, substituted 1996 s.9; 1959 s.25D part, inserted 1982 s.11, amended 1996 s.13(1) and Schedule 1, paragraph 1(22); 1959 s.26 part, amended 1982 s.14(1) and Schedule 1, 1996 s.13(1) and Schedule 1, paragraph 1(25)(c); 1959 s.28A(2)(c) part, inserted 1982 s.15(1) and Schedule 2, paragraph 1, amended 1996 s.13(1) and Schedule 1, paragraph 1(27).
Schedule 6	
Paragraph 1	1996 s.14(3).
Paragraph 2	1996 s.10(2).
Paragraph 3	1996 s.10(3).