



# Deer (Scotland) Act 1959

## 1959 CHAPTER 40

### PART I

#### CONSERVATION AND CONTROL OF RED DEER

#### **1 Constitution and general functions of Red Deer Commission**

- (1) There shall be constituted a commission to be called " the Red Deer Commission " (hereinafter in this Act referred to as " the Commission ") which shall have the general functions of furthering the conservation and control of red deer and of keeping under review all matters relating to red deer, and such other functions as are conferred on them by or under this Act.
- (2) 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.
- (3) The Commission shall consist of a chairman and twelve other members appointed by the Secretary of State, and the provisions of the next following subsection shall apply to the appointment of these members other than the chairman.
- (4) The members of the Commission so appointed shall be appointed as follows—
  - (a) two from nominees of the Nature Conservancy ;
  - (b) three from nominees of such organisations as appear to the Secretary of State to represent the interests of owners of land used for agriculture or forestry;
  - (c) two from nominees of such organisations as appear to the Secretary of State to represent the sporting interest in deer;
  - (d) three from nominees of such organisations as appear to the Secretary of State to represent the interests of farmers and crofters (and of the persons so appointed at least one shall, in the opinion of the Secretary of State, represent the interests of farmers, and at least one shall represent the interests of crofters); and
  - (e) two from nominees of such organisations as appear to the Secretary of State to represent the interests of hill sheep farmers.

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- (5) For the purpose of this section the expression "crofter" has the like meaning as in the Crofters (Scotland) Act, 1955.
- (6) The provisions contained in the First Schedule to this Act shall have effect in relation to the Commission.

## **2 Appointment of panels**

- (1) The Commission may, with the approval of the Secretary of State, set up in any locality a panel consisting of five persons, being a chairman and four other members, two of whom shall, in the opinion of the Commission, be representative of the interests mentioned in heads (b) and (c), and two of the interests in heads (d) and (e), of subsection (4) of the last foregoing section, and of any such panel as aforesaid three shall be a quorum.
- (2) 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.
- (3) The Commission may delegate to a panel appointed under subsection (1) of this section the functions of the Commission under section six of this Act so far as relating to the locality of that panel, and the panel in the exercise of the functions so delegated to them shall comply with any directions given by the Commission.
- (4) In the exercise of any functions delegated to them as aforesaid, a panel shall have the like powers as the Commission in relation to that exercise.

## **3 Duty of Commission to advise Secretary of State**

- (1) It shall be the duty of the Commission to advise the Secretary of State on any such matter relating to the purposes of this Act as he may refer to them, and to bring to his attention any matter relating to red 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, and the Secretary of State shall lay a copy of the report before each House of Parliament, together with such comments as he may think fit to make.

## **4 Particular powers of the Commission**

The Commission shall have power—

- (a) to advise in the interests of conservation any owner of land, on the application of such owner, on questions relating to the carrying of stocks of red deer on that land;
- (b) to collaborate with any person who is conducting any inquiry or investigation into questions of practical or scientific importance relating to red deer.

## **5 Returns of numbers of deer killed**

- (1) The Commission for the purpose of any of their functions may by notice in writing 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 red 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.

- (2) If any person on whom a notice under the foregoing subsection has been served—
- (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,

he shall be liable on summary conviction to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

## **6 Power of Commission to deal with marauding deer**

- (1) Subject to the following provisions of this section, where the Commission are satisfied that red deer are coming on to any agricultural land or woodland or garden ground and are causing substantial damage to crops, pasture or animal or human foodstuffs, or trees on that land, and that the killing of the deer is necessary for the prevention of further damage as aforesaid, they 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 any land mentioned in the authorisation such red deer as appear to that person to be causing the damage.
- (2) Where the Commission are satisfied that the deer which appear to be causing damage as aforesaid come from particular land, and that any person having the right to kill deer thereon will forthwith undertake the killing of the deer first-mentioned, the Commission shall make a request to that effect in writing to that person.
- (3) Where any such request as aforesaid has been made to a person, the Commission shall not issue an authorisation under this section unless it appears to them that he has become unable or unwilling to comply with the terms of the request.
- (4) An authorisation under this section shall remain in force from the date thereof for such period, not exceeding fourteen days, as may be specified in the authorisation.
- (5) Where the Commission intend to issue any such authorisation as aforesaid, it shall be their duty to give as soon as practicable to any person who in their opinion is likely to be on any land mentioned therein such warning of their intention as they consider necessary to prevent danger to that person.
- (6) It shall be the duty of the Commission to give to the owner of any land which is to be mentioned in an authorisation under this section such notice of their intention to issue that authorisation as may be practicable.
- (7) Without prejudice to the general provisions of section sixteen of this Act relating to the service of notices, any notice to be served under this section on an owner of land shall, where an agent or servant is responsible for the management or the farming of the land, be duly served if served on the said agent or servant.
- (8) The Commission may make in respect of the services of any person authorised by them to follow and kill deer as aforesaid, not being one of their servants, such payment as may be agreed.

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## 7 Control schemes

- (1) Where the Commission are satisfied that red deer have caused damage to agriculture or forestry in any locality, and that for the prevention of further damage the red deer in the area in which the locality is situated should be reduced in number or exterminated, they shall determine, having due regard to the nature and character of the land in that area, what measures shall be taken for that reduction or extermination as the case may be.
- (2) Thereafter it shall be the duty of the Commission to consult with such owners or occupiers of land, being land where red deer are established, as the Commission consider to be substantially interested, to secure agreement on the carrying out of the measures which they have determined as aforesaid.
- (3) Where after such consultations the Commission are satisfied that it is not possible to secure agreement as aforesaid or that the measures agreed on are not being carried out, they shall make a scheme (hereinafter in this Act referred to as a " control scheme ") for the carrying out of such measures, and any such scheme before it comes into operation shall require confirmation by the Secretary of State.
- (4) In this Act the area to which a control scheme relates as aforesaid is, in relation to that scheme, referred to as the " control area
- (5) A control scheme shall be made and confirmed in accordance with the provisions of Parts I and III of the Second Schedule to this Act, may be varied or revoked in accordance with the provisions of Parts II and III of the said Schedule, and Part IV of that Schedule shall apply with respect to the validity of such a scheme or any variation or revocation thereof.

## 8 Contents of control schemes

- (1) A control scheme shall—
  - (a) describe the control area by reference to a map and specify the approximate extent of that area ;
  - (b) specify whether the red deer in that area or any part thereof are to be reduced in number or exterminated;
  - (c) specify, where the red deer are to be reduced in number, the number, and if necessary in the opinion of the Commission, the sex and class, of the animals to be killed in the control area or any part thereof, and the limit on the number of red deer of each sex to be allowed to be established in the control area or any part thereof;
  - (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 foregoing provisions of this subsection;
  - (e) prescribe time limits within which the owners or occupiers are to take any such measures as aforesaid ;
  - (f) include any incidental, consequential or supplemental provisions that may be necessary.
- (2) 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.

- (3) Nothing in the foregoing provisions of this section 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 thereof against the movement of red deer, and for the purposes of this section " fence" shall include any artificial obstruction.

## **9 Liability of owners or occupiers under control schemes**

- (1) Where any control scheme has been confirmed, it shall be the duty of every owner or occupier of land to take such measures as the scheme may require of him in accordance with the provisions thereof.
- (2) Any person who refuses or wilfully fails to comply with any requirement laid upon him by a scheme shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding fifty pounds, and in the case of a second or subsequent conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

## **10 Enforcement of control schemes**

If the Commission are of the opinion that any owner or occupier of land upon whom a requirement is laid by a control scheme has failed to carry out that requirement, it shall be the duty of the Commission to carry out the requirement if they are satisfied that it is still necessary so to do.

## **11 Recovery of expenses incurred under section 10**

- (1) Where any expenses incurred by the Commission in the exercise of their functions under the last foregoing section exceed the amount of the proceeds of the sale of the carcasses of any red deer killed in pursuance of that exercise, the excess shall be recoverable from the owner or occupier concerned by the Commission.
- (2) The Commission shall furnish to any owner or occupier concerned a statement showing the expenses incurred in the exercise of their functions as aforesaid, the amount received in respect of the sale of carcasses and the amount recoverable from any owner or occupier under this section; and any owner or occupier who is aggrieved by such a statement may, within one month after such a statement has been furnished to him, appeal to the Scottish Land Court who may, if it appears to them equitable so to do, vary the amount recoverable from him.
- (3) Nothing in the foregoing provisions of this section shall preclude the Commission, with the approval of the Secretary of State, from waiving the right to recover expenses incurred as aforesaid in any particular case.
- (4) The provisions of the Small Landholders (Scotland) Acts, 1886 to 1931, with regard to the Scottish Land Court shall, with any necessary modifications, apply for the determination of any appeal under subsection (2) of this section in like manner as those provisions apply for the determination by the Court of matters referred to them under those Acts.

## **12 Power of Commission to provide services and equipment**

- (1) The Commission may by agreement with any owner or occupier of land assist in or undertake, whether in pursuance of a control scheme or otherwise, the taking or killing

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of red deer and the disposal of such deer or their carcasses; and the agreement may make provision for the providing of equipment by the Commission.

- (2) Any agreement in pursuance of the last foregoing subsection shall, unless the Commission with the approval of the Secretary of State otherwise decide, provide for the payment of any expenses incurred by the Commission under the agreement.

### **13 Power of Commission to dispose of carcasses**

Without prejudice to the operation of the provisions of section eleven of this Act relating to the disposal of the proceeds of the sale of carcasses, and of section twelve of this Act, the Commission shall have power to dispose by sale or otherwise of the carcasses of all deer killed under their authority.

### **14 Persons acting under this Part of this Act not required to obtain game licences**

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

### **15 Entry on land**

- (1) Any person duly authorised in writing by the Commission shall have power at all reasonable times to enter upon any land—
- (a) in pursuance of any of the functions of the Commission under sections six, seven or ten of this Act;
  - (b) for the purpose of determining whether any of their functions under the said sections should be exercised;
  - (c) for the purpose of determining how far and in what manner any requirement placed on any person by virtue of this Part of this Act has been complied with.
- (2) Any person authorised as aforesaid by the Commission who proposes to exercise any power of entry conferred by this section shall, if so required, produce the written document authorising him so to do.
- (3) Admission to any land under this section shall not be demanded as of right, unless notice has been given to the owner and the occupier of the land that it is proposed to enter during a period, specified in the notice, not exceeding one month and beginning at least fourteen days after the giving of the notice, and entry is made on the land during the period specified in the notice:

Provided that this subsection shall not apply to any person acting in pursuance of any of the functions of the Commission under section six of this Act.

### **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 twenty-six of the Interpretation Act, 1889, 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 six of this Act.

## **17 Offences in relation to execution of this Part of this Act**

A person who wilfully obstructs any person acting in the execution of this Part of this Act or of any authorisation issued thereunder shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty pounds, and in the case of a second or subsequent conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

## **18 Financial provisions**

- (1) 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.
- (2) All expenses incurred by the Secretary of State under the provisions of this Act shall be defrayed out of moneys provided by Parliament, and any sums received by him under the provisions of the last foregoing subsection shall be paid into the Exchequer.

## **19 Saving of right to compensation for damage by red deer**

Nothing in the foregoing provisions of this Act or anything done thereunder shall preclude any occupier of any land from recovering any compensation for damage caused by red deer which he would have been entitled to recover if this Act had not been passed.

## **20 Interpretation of Part I**

In this Part of this Act, unless the context otherwise requires—

- " agriculture " and " agricultural land " have the like meanings as in the Agriculture (Scotland) Act, 1948 ;
- " functions " includes powers and duties ;

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" 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 Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking ;

" red deer " means deer of the species *cervus elaphus*.