

# **WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011**

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## **EXPLANATORY NOTES**

### **THE ACT – COMMENTARY ON SECTIONS**

#### **Part 3 – Deer**

##### ***Section 28 – Control agreements and control schemes etc.***

181. **Section 28** of the Act amends sections 7, 8, 10, 11 and Schedule 2 of the 1996 Act.
182. Section 7 of the 1996 Act allows SNH to initiate control agreements where deer are causing certain kinds of damage. These agreements relate to “measures” to manage deer. Section 8 allows SNH to make control schemes where control agreements have failed. Schedule 2 of the 1996 Act sets out the procedure for Ministers to confirm control schemes. Sections 10 and 11 confer powers to take emergency action where deer are causing damage and control agreements or schemes are not an option.
183. Subsection (2) amends section 7 of the 1996 Act, which relates to control agreements. The effect of the amendments is to require SNH to have regard to the code of practice when deciding whether to exercise its functions. The amendments also expand the types of damage which can be relied on as a basis for SNH seeking a control agreement, the purposes of such agreements and the types of measures they can cover. The amended section 7 will cover damage as a result of steps taken or not taken for the purposes of deer management as well as damage by deer themselves. It will also cover damage to deer welfare or to public interests of a social, economic or environmental nature. It will allow SNH to seek a control agreement for the purpose of remedying existing damage (as well as preventing further damage in future). The amendments will also allow control agreements to provide for a wider range of measures than those to reduce deer numbers. The amended section will also state that control agreements may set out steps to be taken by owners or occupiers in each 12 month period within any control agreement. SNH will be required to review compliance with control agreements on an annual basis.
184. Subsection (3) amends section 8 of the 1996 Act, which relates to control schemes. The effect of the amendments is to ensure that, with one exception, the tests which allow SNH to make a control scheme are the same as those which would allow it to seek a control agreement. The exception is that SNH cannot make a control scheme in relation to a control agreement which was concluded for the purpose of altering or enhancing the natural heritage, unless the purpose of that control agreement was to remedy damage caused by deer or steps taken for the purpose of deer management. The amendments also set deadlines for concluding that control agreements have failed. SNH will be required to review compliance with control schemes on at least an annual basis.
185. Subsections (4) and (5) amend sections 10 and 11 of the 1996 Act, which relate to emergency measures to control deer. The amendments will allow emergency measures to be taken in relation to any damage, including damage to deer welfare.

*These notes relate to the Wildlife and Natural Environment (Scotland)  
Act 2011 (asp 6) which received Royal Assent on 7 April 2011*

186. Subsection (6) relates to the procedure for control schemes made under section 8 of the 1996 Act. This replaces the current procedure specified in Schedule 2. This allows owners or occupiers aggrieved by a control scheme to object to the Scottish Ministers who must consider these objections and decide whether or not to confirm the control scheme. Owners or occupiers may subsequently appeal the decision of the Scottish Ministers or the terms and conditions of a control scheme to the Scottish Land Court.