

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

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## **EXPLANATORY NOTES**

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

#### **Part 3 – Deer**

##### ***Section 26 – Deer management etc.***

174. **Section 26** of the Act amends SNH's general functions and duties in relation to deer management under sections 1, 3 and 4 of the Deer (Scotland) Act 1996. Subsection (2) amends section 1 of the 1996 Act to require SNH to take into account the interests of public safety and the need to manage the deer population in urban and peri-urban areas when exercising its functions. This adds to the current factors that must be taken into account (size and density of the deer population and its impact on natural heritage, the needs of agriculture and forestry and the interests of owners and occupiers of land).
175. Subsection (3)(a) amends section 3(1) of the 1996 Act to confer power on SNH to assist any person or organisation in reaching agreements with third parties. This adds to the powers currently set out in section 3 of the 1996 Act.
176. Subsection (3)(b) inserts a new section 3(3) into the 1996 Act. This imposes a duty on public bodies and office holders to have regard in exercising their functions to any guidance or advice issued by SNH relating to the conservation, control or sustainable management of deer or to any other aspect of the SNH's deer functions.
177. Subsection (4) amends section 4(1) of the 1996 Act to remove a limit on the number of members of a panel appointed under that section.
178. Subsection (5) adds public safety as a ground for obtaining authorisation for the taking or killing deer at night and also changes the threshold in the existing ground for such authorisation being given from 'serious damage' to crops, pasture, human or animal foodstuffs or to woodland to 'damage' to crops, pasture, human or animal foodstuffs or to woodland.

##### ***Section 27 – Deer management code of practice***

179. **Section 27** of the Act inserts a new section 5A into the 1996 Act.

#### **Code of practice on deer management – inserted section 5A of the 1996 Act**

180. Section 5A of the 1996 Act imposes a duty on SNH to draw up a Code of Practice for the purpose of providing practical guidance in respect of deer management. Subsections (1) and (2) sets out the purpose and general content of the code. Subsections (3) to (8) sets procedural requirements for the preparation and entry into force of the code as well as its replacement or revision. These include requirements for public consultation, approval by Scottish Ministers and parliamentary procedure. A first, and any replacement, code of practice will be subject to affirmative procedure, with any revision to a code being

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subject to negative procedure. Subsection (12) requires SNH to monitor compliance with the code and to have regard to it in carrying out its own functions.

**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.
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.

**Section 29 – Deer: close seasons etc.**

187. **Section 29** of the Act amends sections 5, 26 and 37 of the 1996 Act.
188. Under section 26 of the 1996 Act, occupiers will retain the right to take or kill deer where there is for the purpose of preventing damage (previously this was serious damage) but will require an authorisation under section 5 of that Act if they wish to do so during the close seasons. SNH will be able to grant authorisations under section 5 of that Act for the purposes of preventing damage to crops, pasture, human or animal foodstuffs

or enclosed woodland. It will be possible to issue general authorisations to classes of people (e.g. occupiers) or in respect of types of land (e.g. arable land). The requirement to consider fitness and competence under section 37 of that Act will continue to apply except when considering authorisations to occupiers for the purposes of preventing damage to crops, pasture, human or animal foodstuffs or enclosed woodland.

### ***Section 30 – Register of persons competent to shoot deer etc.***

189. **Section 30** of the Act inserts new sections 17A and 17B into the 1996 Act. Subsections (2), (3) and (5) to (8) of section 30 make further amendments to the 1996 Act in consequence of the new section 17A.

### **Register of persons competent to shoot deer – inserted section 17A of the 1996 Act**

190. Section 17A of the 1996 Act contains an enabling power which permits Ministers to introduce a requirement that any person shooting deer, or supervising the shooting of deer, must be named on a register as competent to do so. Subsection (4) creates an offence of shooting deer in contravention of requirements set under the enabling power, subject to an exception in subsection (5) which allows the killing of a deer which is injured or diseased or killing dependant young which has been, or is about to be, deprived of its mother.
191. Regulations made under the enabling power may also provide that persons who are registered as competent can be considered “fit and competent” for the purposes of authorisations to shoot deer at night, or during close seasons (subsection (1)(c)).
192. In the event that a competence requirement is introduced, regulations may also require those persons named on the competence register to submit a regular cull return (subsection (1)(d)). “Cull return” is defined in subsection (7) as a return showing the number of deer of each species and of each sex which have been killed. Subsection (6) creates an offence of failing to submit a cull return in accordance with regulations or submitting a return which is materially false or misleading. This offence would replace the offence under section 40(4) of the 1996 Act.
193. Subsection (2) allows regulations to include supplementary, incidental or consequential provision and lists examples of the type of provision this might include.
194. Subsection (9) of section 30 of the Act sets maximum penalties for the new offences in section 17A(4) and (6).

### **Review of competence etc. by SNH – inserted section 17B of the 1996 Act**

195. Section 17B of the 1996 Act requires SNH to conduct and publish a review of competence in deer stalking and its effect on deer welfare if the enabling power in section 17A of that Act has not been exercised by 1 April 2014.

### ***Section 31 – Action intended to prevent suffering***

196. **Section 31** of the Act amends section 25 of the 1996 Act, which provides an exception to the offences in the 1996 Act where the action taken is to prevent suffering. Section 31 adds starvation (where there is no reasonable chance of recovery) to the existing exceptions which relates to injury or disease.

### ***Section 32 – Offence by bodies corporate, Scottish partnerships etc. under the 1996 Act***

197. **Section 32** applies to all of the offences in the 1996 Act. It ensures that where bodies corporate are managed by members those members will be treated as if they were directors of that body and it allows partners to be prosecuted for the offences of a

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partnership, and managers to be prosecuted for the offences of an unincorporated association they are managing.