



Agriculture (Scotland) Act 1948

1948 CHAPTER 45 11 and 12 Geo 6

PART III CONTROL OF INJURIOUS ANIMALS, BIRDS AND WEEDS

Prevention of damage by injurious animals and birds

[^{F1}39] **Control of injurious animals and birds.**

- (1) If it appears to the Secretary of State that it is expedient so to do for the purpose of preventing damage to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks or any works on land, he may by notice in writing served on any person having the right so to do require that person to take, within such time as may be specified in the notice, such steps as may be so specified for the killing, taking or destruction on land so specified of such animals or birds to which this section applies as may be so specified or the eggs of such birds.
- (2) A requirement shall not be imposed under the last foregoing subsection if apart from this subsection the killing, taking or destruction in question would be prohibited by law:

Provided that a requirement may be so imposed to kill or destroy [^{F2} —

- (a) black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge in the close season for that bird (within the meaning of section 2(4) of the Wildlife and Countryside Act 1981 (c.69)); or
- (b) brown hare or mountain hare in the close season for that hare (within the meaning of section 10A(2) of that Act);

and for the purposes of subsection (1) a person is not deemed not to have the right to comply with a requirement falling within this proviso by reason only that, apart from the proviso, compliance with the requirement would constitute an offence under section 1 or (as the case may be) 10A(1) of that Act.]

- (3) The animals to which this section applies are rabbits, hares and other rodents, deer, foxes and moles, and the birds to which this section applies are, in relation to any area, wild birds other than those [^{F3}included in [^{F4}Schedule 1 to the Wildlife and Countryside Act 1981], as it applies in that area, whether by virtue of the terms thereof or by virtue

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of an order of the Secretary of State]; and this section shall apply to such other animals as may be prescribed.

Provided that regulations under this subsection may provide that for the purposes of section forty-nine of this Act any such other animals specified in the regulations shall not be treated as animals to which this section applies.

^{F5}[In subsection (3) above “ deer ” means any species of deer which is not included (3A) in the definition of “ deer ” in [^{F6} section 45 of the Deer (Scotland) Act 1996] (interpretation).

(4) ^{F7}

^{F8}[Where it appears to the Secretary of State expedient for the purpose of preventing (5) damage by rabbits to crops, pasture, trees, hedges, banks or any works on land, he may by notice in writing served on the occupier of any land (or, in the case of unoccupied land, the person entitled to occupy it) require him to take on the land, within the time specified in the notice, such steps as may be so specified to destroy or reduce the breeding places or cover for rabbits or to exclude rabbits therefrom, or to prevent the rabbits living in any place on the land from spreading to or doing damage in any other place; but every such notice shall specify a time within which the occupier or any person interested in the land may submit to the Secretary of State written objections to the notice, and shall be provisional only and of no effect, unless confirmed after the expiration of that time by a further notice in writing served on the occupier of the land; and, where the occupier holds the land under a contract of tenancy, a copy of any notice under this subsection shall be served on any person to whom the occupier pays rent under the tenancy.

A provisional notice under this subsection may be confirmed either without modifications or with such modifications as appear to the Secretary of State desirable having regard to any objections submitted to him.]]

Textual Amendments

- F1** Ss. 39–42 repealed (so far as relating to sika deer within the meaning of the Deer (Amendment) (Scotland) Act 1982 or to any hybrid mentioned in section 1(4) of that Act) by [Deer \(Amendment\) \(Scotland\) Act 1982 \(c. 19, SIF 4:3\)](#), s. 66(1), **Sch. 3**
- F2** Words in s. 39(2) substituted (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), s. 43(1), **Sch. Pt para. 1** (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(l)(i)
- F3** Words substituted by [Protection of Birds Act 1954 \(c. 30\)](#), **Sch. 5**
- F4** Words substituted by [Wildlife and Countryside Act 1981 \(c. 69, SIF 4:5\)](#), **s. 72(4)**
- F5** S. 39(3A) inserted (18.10.1996) by 1996 c. 44, ss. 13(1), 14(2), **Sch. 1 para. 2(2)**.
- F6** Words in s. 39(3A) substituted (18.11.1996) by 1996 c. 58, s. 48(2)(6), **Sch. 4 para. 1(2)** (with s. 43(1)).
- F7** S. 39(4) repealed by [Pests Act 1954 \(c. 68\)](#), **Sch.**
- F8** S. 39(5) added by [Pests Act 1954 \(c. 68\)](#), **s. 2(1)**

Modifications etc. (not altering text)

- C1** S. 39 restricted by Prevention of Damage by Pests Act 1949 (c. 55), **s. 20**; saved by [Protection of Birds Act 1954 \(c. 30\)](#), **s. 4(1)(A)**; extended by [Pests Act 1954 \(c. 68\)](#), **ss. 1(6)(9)(14)**, 3(2); amended by [Pests Act 1954 \(c. 68\)](#), **s. 4(1)(2)**
- C2** Ss. 39-42 repealed so far as relating to red deer by [Deer \(Scotland\) Act 1959 \(c. 40\)](#), **Sch. 3**

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40 Prevention of escape of captive animals.

If it appears to the Secretary of State that, for the purpose of preventing such damage as is mentioned in the last foregoing section, it is expedient to prevent the escape of any animals from land on which they are kept in captivity, the Secretary of State may by notice in writing served on the occupier of the land require him to take within such time as may be specified in the notice such steps to prevent the escape thereof, as may be specified in the notice.

41 Supplementary Provisions as to s. 39 and s. 40.

- (1) If any Person fails to comply with a requirement imposed under either of the two last foregoing sections, he shall be liable on summary conviction to a fine not exceeding twenty-five pounds, and to a further fine not exceeding five pounds for each day after conviction on which the failure continues.
- (2) Without prejudice to any proceedings under the last foregoing subsection, where a requirement imposed under either of the two last foregoing sections has not been complied with, any Person authorised by the Secretary of State in that behalf may at any time enter on the land to which the requirement relates and take such steps as the Secretary of State may direct to secure compliance with the requirement; and the reasonable cost of taking such steps shall be recoverable by the Secretary of State from the person on whom the requirement was imposed.

Any question arising under this subsection as to what is the reasonable cost of taking any such steps as aforesaid shall be determined, in default of agreement, by the Land Court.
- (3) The Secretary of State may give such directions as appear to him to be expedient authorising the keeping of animals, birds, or eggs killed or taken in pursuance of section thirty-nine of this Act or this section and requiring or authorising the disposal of such animals, birds or eggs, whether for the purpose of being used as food or otherwise.
- (4) Where a person incurs any expense reasonably necessary for the purpose of complying with any requirement imposed on him under either of the two last foregoing sections, or where any cost is recovered from a person under subsection (2) of this section, then if he alleges that the expense or cost ought to be borne wholly or in part by some other person having an interest in the land to which the requirement in question relates, he may apply to the Land Court who may make such order for securing that the applicant is wholly or in part indemnified by that other person in respect of the said expense or cost as they consider just and equitable in the circumstances of the case.
- (5) Without prejudice to the general provisions of Part VII of this Act as to the service of notices, any notice to be served under either of the two last foregoing sections on the owner or the occupier of land used for agriculture shall, where an agent or servant of the owner or the occupier is responsible for the [F9 control of the management or farming, as the case may be, of the land in question] be duly served if served on the said agent or servant.

Textual Amendments

F9 Words substituted by [Pests Act 1954 \(c. 68\), s. 4\(3\)](#)

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42 Provision by Secretary of State of equipment and services for pest control.

- (1) The Secretary of State may, for the purpose of assisting in the killing, taking or disposal of animals or birds to which section thirty-nine of this Act applies, and the eggs of such birds, provide or make contributions towards the provision of such services and equipment, appliances and other material as appear to him to be requisite for that purpose.
- (2) The Secretary of State may make such reasonable charges, if any, as he thinks fit in respect of any assistance rendered under the last foregoing subsection, and may recover the amount of any such charge from the person at whose request the assistance was rendered.

Modifications etc. (not altering text)

- C3** S. 42 saved by Prevention of Damage by [Pests Act 1949 \(c. 55\), s. 20](#); extended by [Pests Act 1954 \(c. 68\), s. 2\(2\)](#)

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