



# Hill Farming Act 1946

1946 CHAPTER 73 9 and 10 Geo 6

*Muirburn (Scotland)*

22 .....<sup>F1</sup>

## Textual Amendments

**F1** S. 22 repealed by [Statute Law Revision Act 1950 \(14 Geo. 6 c. 6\)](#)

## [<sup>F2</sup>23 Muirburn season

- (1) A person may make muirburn on land only during the muirburn season.
- (2) The muirburn season consists of—
  - (a) the standard muirburn season; and
  - (b) the extended muirburn season.
- (3) The standard muirburn season is the period of time from 1 October in any year to 15 April in the following year.
- (4) The extended muirburn season is the period of time from 16 April to 30 April in any year.
- (5) A person may make muirburn in the extended muirburn season only if the person is—
  - (a) the proprietor of the land; or
  - (b) authorised in writing by, or on behalf of, the proprietor of the land.]

## Textual Amendments

**F2** S. 23 substituted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), ss. **34(2)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)

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### [<sup>F3</sup>23A Power to vary permitted times for making muirburn

- (1) The Scottish Ministers may, by order, modify section 23 so as to substitute for any of the dates for the time being mentioned in [<sup>F4</sup>subsection (3) or (4) of that section such other dates as they consider appropriate so as to extend or reduce the standard muirburn season or extended muirburn season.]

[ An order under subsection (1) may make different provision for different purposes <sup>F5</sup>(1A) and, in particular, for—

- (a) different land (for example, for land at different altitudes);
- (b) standard muirburn seasons or extended muirburn seasons in different years.]

- (2) The Scottish Ministers may make an order under subsection (1) only if they consider it necessary or expedient to do so in relation to climate change.

[ in relation to climate change]

- <sup>F6</sup>(a) [ for the purposes of conserving, restoring, enhancing or managing the natural <sup>F7</sup>(b) environment; or
- (c) for the purposes of public safety.]

- (3) An order under subsection (1) may not modify any of the dates for the time being mentioned in section 23 if the modification would result in a period during which it is lawful to make muirburn in any year being shorter than the corresponding period which applied [<sup>F8</sup>on the coming into force of section 34 of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).]

- (4) The power conferred by subsection (1) is exercisable by statutory instrument.

- (5) No statutory instrument containing an order under subsection (1) may be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.]

#### Textual Amendments

- F3** S. 23A inserted (S.) (31.10.2009) by [Climate Change \(Scotland\) Act 2009 \(asp 12\)](#), **ss. 58(1)**, 100(2) (with s. 95); S.S.I. 2009/341, art. 2(2)(a)
- F4** Words in s. 23A(1) substituted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), **ss. 34(3)(a)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)
- F5** S. 23A(1A) inserted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), **ss. 34(3)(b)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)
- F6** Words in s. 23A(2)(a) renumbered as s. 23A(2)(a) (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), **ss. 34(3)(c)(i)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)
- F7** S. 23A(2)(b)(c) inserted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), **ss. 34(3)(c)(ii)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)
- F8** Words in s. 23A(3) substituted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), **ss. 34(3)(d)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)

### [<sup>F9</sup>23B Extension of muirburn season under section 23A(1): further regulation

- (1) Where the standard muirburn season or the extended muirburn season is extended for any land by an order under section 23A(1), the Scottish Ministers may by order make provision regulating the making of muirburn during the additional period.

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- (2) Any provision so made applies in addition to the regulation by the provisions of this Act of the making of muirburn during the standard muirburn season or the extended muirburn season.
- (3) An order under subsection (1) may make provision—
  - (a) as to the giving of notice;
  - (b) as to the making, to the Scottish Ministers or a specified person, of representations or objections;
  - (c) as to the consideration by the Ministers or a specified person of any such representations or objections;
  - (d) requiring the approval of the Ministers or a specified person for the making of muirburn;
  - (e) as to such approval being able to be subject to conditions;
  - (f) as to the making of muirburn being subject to conditions specified in the order;
  - (g) creating offences;
  - (h) providing that any offence created is triable only summarily;
  - (i) providing for any offence created to be punishable by a fine not exceeding level 3 on the standard scale;
  - (j) as to such other regulation of the making of muirburn as the Scottish Ministers consider appropriate.
- (4) Conditions specified in pursuance of subsection (3)(f) may refer to matters specified elsewhere.
- (5) In—
  - (a) subsection (1), “the additional period means the period for which the standard muirburn season or, as the case may be, the extended muirburn season is extended for the time being for any land by an order under section 23A(1);
  - (b) subsection (3), “specified person ” means a person specified in the order.
- (6) The power conferred by subsection (1) is exercisable by statutory instrument.
- (7) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

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**Textual Amendments**

**F9** Ss. 23B, 23C inserted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), **ss. 34(4), 43(1)** (with s. 41(1)); S.S.I. 2011/279, art. 2(2)

**[<sup>F9</sup>23C Muirburn licences**

- (1) The Scottish Ministers may grant a licence to a person to make muirburn (a “muirburn licence”) during any period, other than the muirburn season, specified in the licence.
- (2) A muirburn licence may, in particular, make provision for—
  - (a) the land on which the muirburn may be made; and
  - (b) the persons or types of persons who may make the muirburn.
- (3) A muirburn licence may—
  - (a) relate to only part of the land to which the application relates;

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- (b) be subject to any specified conditions (including conditions about the giving of notice).
- (4) A muirburn licence may be granted only for the purposes of—
  - (a) conserving, restoring, enhancing or managing the natural environment;
  - (b) research; or
  - (c) public safety.
- (5) The Scottish Ministers may modify or revoke a muirburn licence.
- (6) The Scottish Ministers may delegate their power to grant, modify and revoke muirburn licences to Scottish Natural Heritage.
- (7) A delegation—
  - (a) must be made by written direction; and
  - (b) may be, to any degree, general or specific and may in particular relate to—
    - (i) a particular licence or type of licence;
    - (ii) a particular area.
- (8) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type which were granted before the delegation.
- (9) The Scottish Ministers may modify or revoke a direction under subsection (7).
- (10) Where a direction is revoked, any existing licence granted under the direction continues to have effect (unless the revoking direction provides otherwise).
- (11) The Scottish Ministers may, by regulations, make further provision for, or in connection with, muirburn licences.
- (12) The power conferred by subsection (11) must be exercised by statutory instrument.
- (13) A statutory instrument containing regulations under subsection (11) is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

#### Textual Amendments

**F9** Ss. 23B, 23C inserted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), **ss. 34(4)**, 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)

## 24 Right of tenant to make muirburn notwithstanding terms of lease.

- (1) Where the tenant of any land is of the opinion that it is necessary or expedient for the purpose of conserving or improving that land to make muirburn thereon, it shall, subject to the provisions of this Act, be lawful for him to make muirburn thereon notwithstanding any provision in the lease of such land prohibiting, whether absolutely or subject to conditions, or restricting in any way, the making of muirburn.
- (2) Not less than twenty-eight days before so making muirburn the tenant shall give notice to the proprietor of the land of the places at which, and the approximate extent to which he proposes to make muirburn; and if the proprietor is dissatisfied as to the places at which, or the extent to which the tenant proposes to make muirburn, he shall, within seven days after the receipt of the intimation from the tenant, give notice to the tenant

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stating the grounds of his dissatisfaction and shall refer the matter to the Secretary of State for his decision, and pending such decision the tenant shall not proceed with the operation of muirburn with respect to which reference has been so made.

[<sup>F10</sup>(2A) Notice by a tenant to a proprietor of land under subsection (2)—

- (a) must be in writing; and
- (b) may be given to any person purporting to be authorised by the proprietor to receive the notice.]

(3) On any reference under the foregoing subsection the Secretary of State, after such inquiry as he may think fit, and after considering any representations made by the parties interested, shall give such directions as he may deem proper regulating the muirburn, and it shall thereupon be lawful for the tenant to make muirburn in accordance with the direction. Any direction given by the Secretary of State under this subsection shall be final.

(4) It shall subject to the provisions of this Act be lawful for the tenant of any land, notwithstanding any provision in the lease of such land prohibiting, whether absolutely or subject to conditions, or restricting in any way, the making of muirburn, to make muirburn thereon if the work is done in accordance with an approved hill farming land improvement scheme; and the provisions of subsections (2) and (3) of this section shall not apply to the making of such muirburn.

**Textual Amendments**

**F10** S. 24(2A) inserted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 34\(5\)](#), [43\(1\)](#) (with [s. 41\(1\)](#)); [S.S.I. 2011/279](#), [art. 2\(2\)](#)

**25 Regulation of muirburn.**

Any person who—

[<sup>F11</sup>(za) makes muirburn or causes or procures the making of muirburn on any land otherwise than—

- (i) during the muirburn season in accordance with section 23; or
- (ii) in accordance with a licence granted under section 23C;]

- (a) commences to make muirburn between one hour after sunset and one hour before sunrise; or
- (b) fails to provide at the place where he is about to make muirburn, or to maintain there while he is making muirburn, a sufficient staff and equipment to control and regulate the burning operations so as to prevent damage to any woodlands on or adjoining the land where the operations are taking place or to any adjoining lands, march fences or other subjects; or

<sup>F12</sup>(c) .....

- (d) makes muirburn on any land without due care so as to cause damage to any woodlands on or adjoining the land or any adjoining lands, woodlands, march fences or other subjects,

shall be guilty of an offence.

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### Textual Amendments

- F11** S. 25(za) inserted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), ss. [34\(6\)\(a\)](#), [43\(1\)](#) (with s. [41\(1\)](#)); S.S.I. 2011/279, art. 2(2)
- F12** S. 25(c) repealed (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), ss. [34\(6\)\(b\)](#), [43\(1\)](#) (with s. [41\(1\)](#)); S.S.I. 2011/279, art. 2(2)

## 26 <sup>[F13]</sup>Notice as to muirburn: general requirement]

- <sup>[F14]</sup>(1) A person who intends to make muirburn during the muirburn season must give notice in writing under this section to—
- (a) the proprietor of the proposed muirburn site (if different from the person making the muirburn); and
  - (b) any occupier of land situated within 1 kilometre of the proposed muirburn site.  
(An order under section 23B(1) may make provision as to other notice to be given in relation to certain periods; and section 24(2) makes provision as to other notice to be given by a tenant.)
- (2) Notice need not be given to a person (“A”) under this section if A has given notice in writing to the person intending to make muirburn that A wishes not to be notified of any intention to make muirburn.
- (3) Where there are 10 or more occupiers of land situated within 1 kilometre of the proposed muirburn site, the person making muirburn may, instead of giving notice under this section to each occupier separately in accordance with section 26A, notify those persons collectively by placing a notice in at least one newspaper circulating in the area which includes the proposed muirburn site.
- (4) Notice under this section must—
- (a) be given—
    - (i) after the expiry of the previous muirburn season; and
    - (ii) not less than 7 days before the muirburn is made;
  - (b) specify the land on which the muirburn is intended to be made;
  - (c) specify that the person being notified may, before the muirburn is made, require further information in relation to—
    - (i) the dates on or between which the muirburn is intended to be made;
    - (ii) the places at which the muirburn is intended to be made; and
    - (iii) the approximate extent of the proposed muirburn.
- (5) Where either the proprietor of the land or an occupier of land situated within 1 kilometre of the proposed muirburn site requests any of the further information mentioned in subsection (4)(c), the person intending to make the muirburn must make reasonable efforts to comply with the request not later than the end of the day before the muirburn is made.
- (6) Any notice required to be given to proprietors of land under this section may be given to any person purporting to be authorised by the proprietor to receive the notice.
- (7) Any person who fails to comply with the requirements of this section is guilty of an offence.]

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#### Textual Amendments

- F13** S. 26 title substituted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 34\(7\)\(a\)](#), 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)
- F14** S. 26(1)-(7) substituted for s. 26(1)(2) (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 34\(7\)\(b\)](#), 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)

### [<sup>F15</sup>26A Giving of muirburn notices under section 24(2) or 26

- (1) Subject to the provisions of this section, any written notice required to be given to a person under section 24(2) or 26 may be given—
- (a) by delivering it to the person personally;
  - (b) by leaving it at, or posting it to, the usual or last known address of the person in the United Kingdom, or in a case where an address has been given by the person, at or to that address;
  - (c) where the person is—
    - (i) a body corporate, by leaving it at or posting it to the address of the registered or principal office of the body in the United Kingdom;
    - (ii) a partnership, by leaving it at or posting it to the principal office of the partnership in the United Kingdom;
  - (d) to the person by electronic communication of any particular form if—
    - (i) the person has agreed to be notified in that form;
    - (ii) the person has supplied the person who is to send the notice with the person's electronic address or number; and
    - (iii) the electronic communication is capable of being accessed and understood by the person.
- (2) Where, after reasonable inquiry, the identity of an occupier cannot be ascertained for the purposes of giving notice under section 26, notice may be given by—
- (a) addressing the notice to “Any occupiers of the land” (describing it); and
  - (b) affixing it to some conspicuous object on the land.
- (3) Unless the contrary is shown, a notice given in accordance with subsection (1)(d) is taken to have been received 48 hours after it is given.]

#### Textual Amendments

- F15** S. 26A inserted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 34\(8\)](#), 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)

### 27 [<sup>F16</sup>Penalties etc. for offences] as to muirburn.

Any person guilty of an offence against section [<sup>F17</sup>25 or 26(7)] of this Act shall be liable on summary conviction to a fine not exceeding [<sup>F18</sup>level 3 on the standard scale].

#### Textual Amendments

- F16** Words in s. 27 title substituted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 34\(9\)\(a\)](#), 43(1) (with s. 41(1)); S.S.I. 2011/279, art. 2(2)

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- F17** Words in s. 27 substituted (S.) (1.8.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 34\(9\)\(b\)](#), [43\(1\)](#) (with [s. 41\(1\)](#)); S.S.I. 2011/279, art. 2(2)
- F18** Words “level 3 on the standard scale” substituted (S.) for “five pounds or to imprisonment for a term not exceeding thirty days or to both such fine and such imprisonment” by virtue of [Wildlife and Countryside Act 1981 \(c. 69, SIF 4:5\)](#), [s. 72\(3\)](#) and [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#)

[<sup>F19</sup>**27A Crown application: sections 23 to 27**

- (1) Sections 23 to 27 (including orders made under section 23B) of this Act bind the Crown.
- (2) No contravention by the Crown of any provision made by or under sections 23 to 27 of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing those provisions, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (2), sections 23 to 27 (including orders made under section 23B) apply to persons in the public service of the Crown as they apply to other persons.]

**Textual Amendments**

- F19** S. 27A inserted (S.) (1.1.2012) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 41\(2\)](#), [43\(1\)](#) (with [s. 41\(1\)](#)); S.S.I. 2011/433, art. 2(1)(i)



**Changes to legislation:**

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