

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Protection of Wildlife Schedule 6

Protection of Wildlife

Non-native species

370. The provisions of section 14 of the 1981 Act, regulating the keeping and release of non-native species, have been extended. The changes made paragraph 12 of by Schedule 6 include:
- provision adding hybrids of non-native animal species to the terms of section 14. In this context “animal” also includes birds. It is therefore an offence not only, for example, to release an animal which is a non-native but also to release any native species which has been crossed with a non-native animal;
 - provision extending the prohibition on the release of non-native animals included in Part I of Schedule 9 to situations in which such an animal is allowed to escape from captivity. The reference to “from captivity” replaces the existing reference in the 1981 Act to allowing an animal to escape “into the wild”. This rather narrower term is intended to tighten up controls on non-native animals; and
 - the reference to “the wild” is retained in relation to all plants specified in Schedule 9 and a new offence of planting or otherwise causing a hybrid of a Schedule 9 plant to grow in the wild is created.
371. [Paragraph 13](#) of Schedule 6 provides a new power for the Scottish Ministers to prohibit the sale, or the offering or exposing for sale, of any non-native bird, animal or plant they may specify and to prohibit the publication of advertisements offering to buy or sell any such bird, animal or plant. The term “sale” includes (by virtue of section 27 of the 1981 Act) the hire, barter or exchange of non-native species.
372. The Scottish Ministers may prohibit the sale etc. of specific non-native species by listing them in an order made under new section 14A, inserted into the 1981 Act by paragraph 13. The order may make the inclusion of any species subject to such exceptions as the Scottish Ministers believe to be appropriate and may be applied only to certain areas of Scotland and its application restricted to particular times of the year.
373. [Paragraph 13](#) also inserts new section 14B which provides a specific statutory power for the Scottish Ministers to issue guidance (or approve guidance issued by others) in relation to non-native species. Such guidance will provide recommendations, advice and information in relation to non-native birds, animals and plants. Although failure to comply with guidance does not in itself constitute a breach of legal duty, the guidance

*These notes relate to the Nature Conservation (Scotland) Act
2004 (asp 6) which received Royal Assent on 11 June 2004*

is admissible in evidence in the event of any criminal or civil proceedings. Failure to comply with, or to take adequate account of, the guidance can form part of the evidence presented by the prosecution in relation to any offence under sections 14 and 14A of the 1981 Act. An example might be where the guidance provides clear advice on avoiding the release of non-native species and that advice has demonstrably not been followed.