

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

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## **EXPLANATORY NOTES**

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

#### **Part 2 – Wildlife under the 1981 Act**

#### ***Section 3 – Protection of game birds etc. and prevention of poaching***

#### **Subsections (4), (7) and (8)**

26. Subsections (4), (7) and (8) amend section 2 of, and Schedule 2 to the 1981 Act, with the general effect that it is lawful to kill or take game birds outside the close seasons for such birds, provided that the person who kills or takes any bird covered by section 2 of that Act has a legal right to do so (or permission from a person with such a right).
27. Subsection (4), paragraphs (b) and (c), qualifies the exception in section 2(1) of the 1981 Act under which it is not an offence under section 1 of that Act for any person to kill or take a bird included in Part 1 of Schedule 2 to that Act outside the close season for that bird, with the effect that the exception only applies where the person who kills or takes the bird has either a legal right to do so or permission from a person with such a right. The Act does not however confer or alter any legal right to kill or take a wild bird, or to give permission to do so. In broad terms, a legal right to kill or take a wild bird on or over land arises from ownership or lawful occupation of the land or of an interest in the land.
28. Subsection (4)(d) amends the qualification in section 2(3) of the 1981 Act which provides that the exception in section 2(1) of that Act (as discussed above) does not apply in Scotland on Sundays or on Christmas Day, so that the qualification only applies to birds listed in both Parts 1 and 1A of Schedule 2 to that Act. Subsection (8) inserts Part 1A into the 1981 Act. The effect is that it is not an offence to kill or take a grouse, partridge, common pheasant or ptarmigan on a Sunday or on Christmas Day.
29. Subsection (4), paragraph (e) inserts new subsections (3A) to (3C) into section 2 of the 1981 Act as follows:
  - subsections (3A) and (3B) have the effect that it is not an offence for person with a legal right or permission to do so (as discussed above) to take for the purposes of breeding grey or red-legged partridge or common pheasant, or the egg of such a bird, during a period of 28 days after the start of the close season for those birds (a process sometimes referred to as “catching up”), and
  - subsection (3C) has the effect that it is not an offence for a person with such a right or permission to take a red grouse for the purpose of preventing the spread of disease where it is intended to release the bird after no more than 12 hours.
30. Subsection (4), paragraph (f), amends section 2(4) of the 1981 Act to create close seasons for pheasant, grey and red-legged partridge, black grouse, red grouse and

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

ptarmigan. The provision should be read with section 25 and Part 2 of the schedule, which repeals the close seasons set for those species under the [Game \(Scotland\) Act 1772 \(c.54\)](#).

31. Subsection (4), paragraph (g), amends section 2(7) of the 1981 Act with the effect that the Scottish Ministers must consult such persons interested in the shooting of birds proposed to be protected by a special protection order under section 2(6) of that Act as they consider appropriate.
32. Subsection (7) amends Part 1 of Schedule 2 to the 1981 Act to add game bird species (black grouse, red grouse, grey partridge, red-legged partridge, common pheasant, and ptarmigan) to the list of birds which may be killed or taken outside the close season for those birds.