

# **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 24 – Liability in relation to certain offences by others***

162. **Section 24** of the Act inserts sections 18A and 18B into the 1981 Act.

##### **Vicarious liability for certain offences by employee etc, – inserted section 18A of the 1981 Act**

163. Section 18A of the 1981 Act has the effect that where the employee or agent of a person with a right to take or kill a wild bird on or over land, or of a person who manages or controls such a rights (see subsection 5), is guilty of relevant offences (see subsection 6) on or in relation to that land, then such a person is also guilty of an offence.
164. Subsection (3) provides for it to be defence for the person who has (or controls or manages) the relevant right to show that they did not know that an offence was being committed by the employee or agent, and that they took all reasonable steps and exercised all due diligence to avoid the offence being committed (a “due diligence” defence).
165. Subsection (4) has the effect that proceedings for an offence can be taken against the person who has (or controls or manages) the relevant right, or the employee or agent, or all such persons.
166. The penalties relating to offences under section 18A of the 1981 Act are the same as those that apply to the relevant offences (for which see section 21 of the 1981 Act).

##### **Liability where securing services through another – inserted section 18B of the 1981 Act**

167. Section 18B of the 1981 Act supplements inserted section 18A of that Act.
168. Section 18B has the effect that where a person providing relevant services to a person who has (or controls or manages) the relevant right is guilty of a relevant offence (see subsection 6) on or in relation to that land, then the person who has (or controls or manages) the relevant right is also guilty of an offence.
169. Subsection (4) has the effect that proceedings for an offence can be taken against the person who has (or controls or manages) the relevant right, the person who provides relevant services, or all such persons.
170. Subsection (5) has the effect that a person is providing “relevant services” if they are managing or controlling shooting on or over that land, habitat of birds on that land,

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Act 2011 (asp 6) which received Royal Assent on 7 April 2011*

presence of predators of those birds on that land or releasing birds from captivity for the purpose of shooting on or over that land.

171. A 'due diligence' defence is also available under section 18B, and the penalties are again those that apply to the relevant offences.