



# Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

## PART 2

### WILDLIFE UNDER THE 1981 ACT

#### *Wild birds, their nests and eggs*

#### **2 Application of the 1981 Act to game birds**

In section 27(1) of the 1981 Act (interpretation of Part I)—

- (a) the definition of “game bird” is repealed,
- (b) in the definition of “wild bird”, the words “or, except in sections 5 and 16, any game bird” are repealed.

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

- (1) The 1981 Act is amended as follows.
- (2) In the italic heading before section 1 (protection of wild birds, their nests and eggs), at the end add “and prevention of poaching”.
- (3) In that section, for subsection (6) (“wild birds” in section 1 does not include birds shown to have been bred in captivity), substitute—
  - “(6) For the purposes of this section, the definition of “wild bird” in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless—
    - (a) it has been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme; or
    - (b) it is a mallard, grey or red-legged partridge, common pheasant or red grouse which is no longer in captivity and is not in a place where it was reared.”.
- (4) In section 2 (exceptions to section 1)—

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- (a) in the title, at the end add “: acts by certain persons outside close season”,
- (b) in subsection (1), after “this section,” insert “where subsection (1A) applies”,
- (c) after that subsection insert—

“(1A) This subsection applies where—

- (a) the person who kills or injures had—
  - (i) a legal right to kill such a bird; or
  - (ii) permission, from a person who had a right to give permission, to kill such a bird; or
- (b) the person who takes had—
  - (i) a legal right to take such a bird; or
  - (ii) permission, from a person who had a right to give permission, to take such a bird.”,
- (d) in subsection (3), after “Christmas Day” insert “in relation to those birds included in Part I of Schedule 2 which are also included in Part IA of that Schedule”,
- (e) after subsection (3), insert—

“(3A) Subject to the provisions of this section, where subsection (3B) applies a person does not commit an offence under section 1 by reason of the taking for the purposes of breeding of—

- (a) a partridge or pheasant included in Part I of Schedule 2; or
- (b) an egg of such a bird.

(3B) This subsection applies where—

- (a) the person who takes does so during the period of 28 days commencing with the first day of the close season for the bird; and
- (b) the person who takes had—
  - (i) a legal right to take such a bird; or
  - (ii) permission, from a person who had a right to give permission, to take such a bird.

(3C) A person does not commit an offence under section 1 by reason of the taking of a red grouse if—

- (a) the grouse is taken—
  - (i) for the purpose of preventing the spread of disease; and
  - (ii) with the intention of releasing it from captivity after no more than 12 hours; and
- (b) the person had—
  - (i) a legal right to take such a grouse; or
  - (ii) permission, from a person who had a right to give permission, to take such a grouse.”,

- (f) in subsection (4)—

(i) after paragraph (b) insert—

“(ba) in the case of pheasant, the period in any year commencing with 2nd February and ending with 30th September;

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- (bb) in the case of partridge, the period in any year commencing with 2nd February and ending with 31st August;”,
- (ii) after paragraph (c) insert—
- “(ca) in the case of black grouse, the period commencing with 11th December in any year and ending with 19th August in the following year;
- (cb) in the case of ptarmigan and red grouse, the period commencing with 11th December in any year and ending with 11th August in the following year;”,
- (g) in subsection (7)—
- (i) for “a person” substitute “such persons”,
- (ii) at the end add “as he considers appropriate”.
- (5) In section 5(5) (use of cage traps or nets for breeding purposes), for “game bird” substitute “grouse, mallard, partridge or pheasant included in Part I of Schedule 2”.
- (6) In section 26 (regulations, orders, notices etc.)—
- (a) in subsection (2)—
- (i) after “than” insert “—
- (a) an order under any of”,
- (ii) for “and” substitute “or”,
- (iii) after “11(4)” insert “; and
- (b) an order under section 22(1)(a) which removes from Part I of Schedule 2 black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge;”,
- (b) in subsection (3)—
- (i) after “No” insert “—
- (a)”,
- (ii) after “11(4)” insert “; or
- (b) order under section 22(1)(a) which removes from Part I of Schedule 2 any bird referred to in paragraph (b) of subsection (2);”.
- (7) In Schedule 2, Part I (birds which may be killed or taken outside the close season)—
- (a) before the entries relating to the bird with the common name “Mallard” insert in columns 1 and 2 the following entries—

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“Grouse, Black	Tetrao tetrix
Grouse, Red	Lagopus lagopus scoticus”,

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(b) after the entries relating to the bird with the common name “Moorhen” insert in columns 1 and 2 the following entries—

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“Partridge, Grey	Perdix perdix
Partridge, Red-legged	Alectoris rufa
Pheasant, Common	Phasianus colchicus”,

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- (c) after the entries relating to the bird with the common name “Pochard” insert in columns 1 and 2 the following entries—

“Ptarmigan	Lagopus mutus”,
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- (8) In Schedule 2, after Part I insert—

**“PART IA**

EXCEPTION: BIRDS INCLUDED IN PART I WHICH MAY NOT  
BE KILLED OR TAKEN ON SUNDAYS OR CHRISTMAS DAY

<i>Common name</i>	<i>Scientific name</i>
Coot	<i>Fulica atra</i>
Duck, Tufted	<i>Aythya fuligula</i>
Gadwall	<i>Anas strepera</i>
Goldeneye	<i>Bucephala clangula</i>
Goose, Canada	<i>Branta canadensis</i>
Goose, Greylag	<i>Anser anser</i>
Goose, Pink-footed	<i>Anser brachyrhynchus</i>
Mallard	<i>Anas platyrhynchos</i>
Moorhen	<i>Gallinula chloropus</i>
Pintail	<i>Anas acuta</i>
Plover, Golden	<i>Pluvialis apricaria</i>
Pochard	<i>Aythya ferina</i>
Shoveler	<i>Anas clypeata</i>
Snipe, Common	<i>Gallinago gallinago</i>
Teal	<i>Anas crecca</i>
Wigeon	<i>Anas penelope</i>
Woodcock	<i>Scolopax rusticola</i> ”.

**4 Areas of special protection for wild birds**

- (1) The 1981 Act is amended as follows.
- (2) Section 3 (areas of special protection) is repealed.
- (3) In section 4 (exceptions to sections 1 and 3)—
- (a) for the title, substitute “Further exceptions to s. 1”,
  - (b) in subsection (1) the words “or in any order made under section 3” are repealed,

- (c) in subsections (2) and (3) the words “or any order made under section 3” are repealed.
- (4) In section 16 (power to grant licences)—
  - (a) in subsection (1) the words “and orders under section 3” are repealed,
  - (b) in subsection (2) for “and orders under section 3 do” substitute “does”.
- (5) In section 26 (regulations, orders, notices etc.)—
  - (a) in subsection (2) “3,” is repealed,
  - (b) in subsection (4)(a) the words from “, except” to “3,” are repealed.

## **5 Sale of live or dead wild birds, their eggs etc.**

- (1) The 1981 Act is amended as follows.
- (2) In section 2—
  - (a) in subsection (4) (close seasons), for “this section and section 1” substitute “section 1, this section and section 6”,
  - (b) in subsection (6) (period of special protection forms part of close season), for “this section and section 1” substitute “section 1, this section and section 6”.
- (3) In section 6 (sale etc. of live or dead wild birds, eggs etc.)—
  - (a) in subsection (1)(a)—
    - (i) the words from “other” to “3” are repealed,
    - (ii) after “egg” where it second occurs insert “other than—
      - (i) a bird included in Part I of Schedule 3 (see also subsection (5));
      - (ii) a bird included in Part 1A of that Schedule to which subsection (1A) applies; or
      - (iii) an egg to which subsection (1B) applies or any part of such an egg”,
  - (b) after subsection (1) insert—

“(1A) This subsection applies to a bird which—

    - (a) was bred in captivity and remained in captivity or a place where it was reared;
    - (b) was a wild bird for the purposes of section 1 (see section 1(6)) and was taken by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird outside the close season for the bird; or
    - (c) was such a wild bird of the following type and was taken by a person with such right or permission during the period of 28 days which commences with the first day of its close season—
      - (i) a partridge included also in Part I of Schedule 2; or
      - (ii) a pheasant included also in that Part.
- (1B) This subsection applies to the following eggs—
  - (a) an egg of a bird included in Part 1A of Schedule 3 to which subsection (1A) applies; or

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- (b) an egg of a bird included in Part IA of Schedule 3 to which that subsection does not apply if the egg was taken—
    - (i) outside the close season for the bird or during the period of 28 days commencing with the first day of its close season; and
    - (ii) by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird.”
  - (c) in subsection (2)(a)—
    - (i) after “Part II” insert “, IIA”,
    - (ii) after “Schedule 3” insert “(see also subsections (5B) and (6))”,
  - (d) for subsection (5) substitute—
    - “(5) Any reference in this section to any bird included in Part I of Schedule 3 is a reference to any bird included in that Part which—
      - (a) was bred in captivity;
      - (b) has been ringed or marked in accordance with regulations made by the Scottish Ministers; and
      - (c) has not been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme.
    - (5A) Regulations made for the purposes of subsection (5)(b) may make different provision for different birds or different provisions of this section.”
  - (e) after subsection (5A) (as inserted by paragraph (d)) insert—
    - “(5B) Any reference in this section to any bird included in Part IIA of Schedule 3 is a reference to any bird included in that Part which was killed outside the close season for the bird by a person who had a legal right to kill such a bird or permission, from a person who had a right to give permission, to kill such a bird.”
  - (f) for subsection (6), substitute—
    - “(6) Any reference in this section to any bird included in Part III of Schedule 3 is a reference, during the period commencing with 1st September in any year and ending with 28th February of the following year, to any bird included in that Part.”
- (4) In Schedule 3 (birds which may be sold)—
- (a) after Part I insert—

#### “PART IA

ALIVE IF TAKEN IN CAPTIVITY OR BY CERTAIN PERSONS OUTSIDE  
CLOSE SEASON OR DURING FIRST 28 DAYS OF CLOSE SEASON

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<i>Common name</i>	<i>Scientific name</i>
Grouse, Red	Lagopus lagopus scoticus
Mallard	Anas platyrhynchos

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<i>Common name</i>	<i>Scientific name</i>
Partridge, Grey	Perdix perdix
Partridge, Red-legged	Alectoris rufa
Pheasant, Common	Phasianus colchicus”,

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(b) after Part II insert—

## “PART IIA

### DEAD IF KILLED OUTSIDE CLOSE SEASON BY CERTAIN PERSONS

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<i>Common name</i>	<i>Scientific name</i>
Coot	Fulica atra
Duck, Tufted	Aythya fuligula
Grouse, Black	Tetrao tetrix
Grouse, Red	Lagopus lagopus scoticus
Mallard	Anas platyrhynchos
Partridge, Grey	Perdix perdix
Partridge, Red-legged	Alectoris rufa
Pheasant, Common	Phasianus colchicus
Pintail	Anas acuta
Plover, Golden	Pluvialis apricaria
Pochard	Aythya ferina
Ptarmigan	Lagopus mutus
Shoveler	Anas clypeata
Snipe, Common	Gallinago gallinago
Teal	Anas crecca
Wigeon	Anas penelope
Woodcock	Scolopax rusticola”,

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(c) in Part III (birds which may be sold dead from 1st September to 28th February), the entries relating to birds with the following common names are repealed—

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Coot  
Duck, Tufted  
Mallard  
Pintail  
Plover, Golden

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Pochard  
 Shoveler  
 Snipe, Common  
 Teal  
 Wigeon  
 Woodcock.

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*Wild hares, rabbits etc.*

**6 Protection of wild hares etc.**

- (1) The 1981 Act is amended as follows.
- (2) After section 10, insert—

**“10A Protection of wild hares etc.**

- (1) Subject to the provisions of this Part, any person who intentionally or recklessly kills, injures or takes any wild animal included in Schedule 5A in the close season for the animal is guilty of an offence.
- (2) In this section, “close season” means—
  - (a) in the case of a mountain hare, the period in any year beginning with 1st March and ending with 31st July;
  - (b) in the case of a brown hare, the period in any year beginning with 1st February and ending with 30th September.
- (3) The Scottish Ministers may by order vary the close season for any wild animal included in Schedule 5A which is specified in the order.
- (4) If it appears to the Scottish Ministers expedient that any wild animals included in Schedule 5A should be protected during any period outside the close season for those animals, they may by order declare any period not exceeding 14 days as a period of special protection for those animals.
- (5) Before making an order under subsection (4), the Scottish Ministers must consult such persons appearing to them to be representative of persons interested in the killing or taking of animals of the kind proposed to be protected by the order as they consider appropriate.
- (6) Where an order is made under subsection (4), this section has effect as if any period of special protection declared by the order forms part of the close season for those animals.
- (7) An order under subsection (3) or (4) may be made as respects the whole of Scotland or any part of Scotland specified in the order.
- (8) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.



## **10B Exceptions to s. 10A**

- (1) A person is not guilty of an offence under section 10A(1) by reason of the killing of an animal included in Schedule 5A if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering.
  - (2) A person is not guilty of an offence under section 10A(1) by reason of taking any such animal if he shows that—
    - (a) he had a legal right to take such an animal or permission, from a person who had a right to give permission, to take such an animal; and
    - (b) the animal—
      - (i) had been disabled otherwise than by his unlawful act; and
      - (ii) was taken solely for the purpose of tending it and releasing it when no longer disabled.
  - (3) An authorised person is not guilty of an offence under section 10A(1) by reason of the killing or injuring of an animal included in Schedule 5A if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.
  - (4) An authorised person is not entitled to rely on the defence provided by subsection (3) as respects any action if—
    - (a) it had become apparent, before the action was taken, that it would prove necessary for the purpose mentioned in that subsection; and
    - (b) either—
      - (i) a licence under section 16 authorising the action had not been applied for as soon as reasonably practicable after that fact had become apparent; or
      - (ii) an application for such a licence had been determined.
  - (5) An authorised person is not entitled to rely on the defence provided by subsection (3) as respects any action unless he notified the appropriate authority as soon as reasonably practicable after the action was taken that he had taken it.
  - (6) In subsection (5), “the appropriate authority” has the same meaning as in section 16(9).
  - (7) Nothing in section 10A makes unlawful—
    - (a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or
    - (b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.
- (3) In section 26(2) (regulations, orders, notices etc.), after “5” insert “, 10A(4)”.
- (4) In the title of Schedule 5 (animals which are protected), at the end add “under section 9”.
- (5) After that Schedule, insert—

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**“SCHEDULE 5A***(introduced by sections 10A and 22)***ANIMALS WHICH ARE PROTECTED UNDER SECTION 10A IN THEIR CLOSE SEASON**

<i>Common name</i>	<i>Scientific name</i>
Hare, mountain	<i>Lepus timidus</i>
Hare, brown	<i>Lepus europaeus</i> ”.

**7 Prevention of poaching: wild hares, rabbits etc.**

- (1) The 1981 Act is amended as follows.
- (2) In the italic heading before section 9 (protection of certain wild animals), at the end add “and prevention of poaching”.
- (3) After section 11F (inserted by section 13(3)), insert—

**“11G Prevention of poaching: wild hares, rabbits etc.**

- (1) Subject to the provisions of this Part, any person who intentionally or recklessly kills, injures or takes any wild animal included in Schedule 6A is guilty of an offence.
- (2) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.

**11H Exceptions to s. 11G**

- (1) A person is not guilty of an offence under section 11G(1)—
  - (a) by reason of the killing of an animal included in Schedule 6A if he had a legal right, or permission from a person who had a right to give permission, to kill such an animal; or
  - (b) by reason of the taking of such an animal if he had a legal right, or permission from a person who had a right to give permission, to take such an animal.
- (2) A person is not guilty of an offence under section 11G(1) by reason of the killing of an animal included in Schedule 6A if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering.
- (3) Nothing in section 11G makes unlawful—
  - (a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or
  - (b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.
- (4) After Schedule 6, insert—

“SCHEDULE 6A

(introduced by sections 11G and 22)

ANIMALS NOT TO BE POACHED

<i>Common name</i>	<i>Scientific name</i>
Hare, mountain	Lepus timidus
Hare, brown	Lepus europaeus
Rabbit	Oryctolagus cuniculus”.

**8 Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully**

- (1) The 1981 Act is amended as follows.
- (2) After section 11H (inserted by section 7(3)), insert—

**“11I Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully**

- (1) Any person who does any of the following is guilty of an offence—
  - (a) has in his possession or control any live or dead wild animal which has been killed or taken in contravention of section 10A or 11G, or any part of or anything derived from such an animal;
  - (b) sells, offers or exposes for sale, or has in his possession or transports for the purposes of sale any such animal or any part of or anything derived from such an animal; or
  - (c) publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells or intends to buy or sell any of those things.
- (2) A person is not guilty of an offence under subsection (1) in relation to an activity mentioned in that subsection if he shows that he carried out the activity concerned with reasonable excuse.
- (3) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.”.

**9 Wild hares, rabbits etc.: licences**

In section 16 of the 1981 Act (certain offences not committed if activity done in accordance with licence)—

- (a) in subsection (3)—
  - (i) after “9(1), (2), (4) and (4A),” insert “10A(1),”
  - (ii) after “11C” (inserted by section 13(4)) insert “, 11G(1),”
- (b) in subsection (4)(b) after “9(5)” insert “, 11I(1)”.

**10 Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close seasons**

In section 22 of the 1981 Act (power to vary schedules and prescribe close seasons)—

- (a) in subsection (1)(b), for “or 6” substitute “, 5A, 6 or 6A”,
- (b) after subsection (2), insert—

“(2ZA) An order under subsection (1) adding any animal to Schedule 5A may prescribe a close season in the case of that animal for the purposes of section 10A.”.

**11 Wild hares and rabbits: miscellaneous**

- (1) The 1981 Act is amended as follows.
- (2) Before section 12 (protection of certain mammals), insert—

**“12YA Relaxation of restriction on night shooting of hares and rabbits**

Schedule 7, which amends certain Acts prohibiting night shooting of hares and rabbits by occupiers of land etc., has effect.”.

- (3) Section 12 (protection of certain mammals) is repealed.
- (4) In Schedule 7—
  - (a) for the title substitute “Amendment of Acts In Relation To Night Shooting of Hares and Rabbits”,
  - (b) in the section reference after the Schedule title, for “12” substitute “12YA”.

*Wild birds, hares, rabbits etc.: single witness evidence*

**12 Single witness evidence in certain proceedings under the 1981 Act**

In section 19A of the 1981 Act (single witness evidence in Scotland as to taking or destruction of eggs)—

- (a) in the section title for “as to taking or destruction of eggs” substitute “in certain proceedings”,
- (b) for the words from “an” to “Act” substitute “any of the following offences”,
- (c) at the end insert “—
  - (a) an offence under section 1(1)(a) in relation to a grouse, partridge, pheasant or ptarmigan included in Part I of Schedule 2;
  - (b) an offence under section 1(1)(c);
  - (c) an offence under section 6(1) in relation to a grouse, partridge or pheasant included in Part IA of Schedule 3;
  - (d) an offence under section 6(2) in relation to a grouse, partridge, pheasant or ptarmigan included in Part IIA of that Schedule;
  - (e) an offence under section 10A(1), 11G(1) or 11I(1)”.

## *Snares*

### **13 Snares**

- (1) The 1981 Act is amended as follows.
- (2) In section 11 (prohibition of certain methods of killing or taking wild animals)—
  - (a) after subsection (1), insert—

“(1A) For the purposes of subsection (1)(aa), a snare which is of such a nature or so placed (or both) as to be calculated to cause unnecessary suffering to any animal coming into contact with it includes—

    - (a) where the person who sets in position or otherwise uses the snare does so to catch any animal other than a fox, a snare which is not fitted with a stop which is capable of preventing the noose of the snare reducing in circumference to less than 13 centimetres;
    - (b) where the person who sets in position or otherwise uses the snare does so to catch a fox, a snare which is not fitted with a stop which is capable of preventing the noose of the snare reducing in circumference to less than 23 centimetres;
    - (c) a snare which is neither—
      - (i) staked to the ground; nor
      - (ii) attached to an object,in a manner which will prevent the snare being dragged by an animal caught by it; and
    - (d) a snare which is set in a place where an animal caught by the snare is likely to—
      - (i) become fully or partially suspended; or
      - (ii) drown.”,
  - (b) subsections (3) to (3B) and (3D) are repealed.
- (3) After that section, insert—

#### **“11A Snares: training, identification numbers, tags etc.**

- (1) Any person who sets a snare in position must have an identification number (see also subsections (3), (4) and (7) in relation to identification numbers and training).
- (2) Any person who sets in position or otherwise uses a snare must ensure—
  - (a) that a tag is fitted on the snare in such a manner that it is not capable of being easily removed from the snare;
  - (b) that there is displayed on the tag (in a manner in which it will remain readable) the identification number of the person who set the snare in position; and
  - (c) where the snare is intended to catch the following types of animal—
    - (i) brown hares or rabbits; or
    - (ii) foxes,

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that there is also displayed on the tag (in a manner in which it will remain readable) a statement that it is intended to catch the type of animal in question.

- (3) For the purposes of this section and sections 11D and 11E, the identification number of a person who sets a snare in position is the identification number issued to him by a chief constable.
- (4) A chief constable—
  - (a) on receipt of an appropriate application from any person for an identification number for the purpose of setting snares in position in the chief constable's police area; and
  - (b) on being satisfied that the applicant has been trained to set a snare in position and on the circumstances in which the setting of snares is an appropriate method of predator control,must grant the application and issue the applicant with an identification number.
- (5) Any person who fails to comply with subsection (1) is guilty of an offence.
- (6) Any person who—
  - (a) has an identification number and sets in position or otherwise uses a snare; but
  - (b) fails to comply with subsection (2) in any respect,is guilty of an offence.
- (7) Where an identification number has been issued by a chief constable under subsection (4), the person to whom it is issued—
  - (a) may use it also for tags fitted on any snares which he sets in position in any other chief constable's police area; and
  - (b) need not apply to any other chief constable for a separate identification number in relation to setting any such snare in position.
- (8) The Scottish Ministers may by order make provision as regards—
  - (a) when a person has been trained to set a snare in position and on the circumstances in which the setting of snares is an appropriate method of predator control;
  - (b) how a chief constable is to be satisfied that an applicant for an identification number has been so trained;
  - (c) the manner in which a tag is to be fitted for the purposes of subsection (2)(a) (including the material from which a tag is to be made);
  - (d) the manner in which an identification number is to appear on a tag for the purposes of subsection (2)(b), and in which a statement is to be displayed on a tag for the purposes of subsection (2)(c);
  - (e) the form of and manner of making an application for an identification number;
  - (f) the determining by the Scottish Ministers, or by chief constables in accordance with the order, of any fee to accompany the application and the charging of any such fee;
  - (g) the issuing of identification numbers under subsection (4);

- (h) the keeping of records of identification numbers issued, the persons to whom they are issued and the sharing of information from such records;
- (i) such other matters in relation to training, tags or identification numbers (including the making of an application for, or the issuing of, an identification number) as they consider appropriate.

(9) In this section—

“appropriate application” means an application made in accordance with the provisions of an order under subsection (8);

“chief constable” means a chief constable of a police force appointed under section 4(1) of the Police (Scotland) Act 1967;

“chief constable’s police area” means the police area for which the police force of which the chief constable is such officer is maintained; and  
“police area” is to be construed in accordance with section 50 of that Act.

#### **11B Snares: duty to inspect etc.**

- (1) Any person who sets a snare in position must while it remains in position inspect it or cause it to be inspected, at least once every day at intervals of no more than 24 hours, for the following purposes—
  - (a) to see whether any animal is caught by the snare; and
  - (b) to see whether the snare is free-running.
- (2) Any person who while carrying out such an inspection—
  - (a) finds an animal caught by the snare must, during the course of the inspection, release or remove the animal (whether it is alive or dead); and
  - (b) finds that the snare is not free-running must remove the snare or restore it to a state in which it is free-running.
- (3) Subject to the provisions of this Part, any person who—
  - (a) without reasonable excuse, contravenes subsection (1); or
  - (b) contravenes subsection (2),is guilty of an offence.
- (4) For the purposes of this section, a snare is “free-running” if—
  - (a) it is not self-locking;
  - (b) it is not capable (whether because of rust, damage or other condition or matter) of locking; and
  - (c) subject only to the restriction on such movement created by the stop fitted in accordance with section 11(1A)(a) or (b), the noose of the snare is able at all times freely to become wider or tighten (and is not prevented from doing so whether because of rust, damage or other condition or matter other than the stop).

#### **11C Snares: authorisation from landowners etc.**

Subject to the provisions of this Part, any person who without reasonable excuse—

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- (a) while on any land has in his possession any snare without the authorisation of the owner or occupier of the land; or
  - (b) sets any snare in position on any land without the authorisation of the owner or occupier of the land,
- is guilty of an offence.

**11D Snares: presumption arising from identification number**

The identification number which appears on a tag fitted on a snare is presumed in any proceedings to be the identification number of the person who set the snare in position.

**11E Snares: record keeping**

- (1) Any person who has an identification number must keep a record of the following—
  - (a) the location of every snare set in position by the person which remains in position;
  - (b) the location of every other snare set in position by the person within the past two years;
  - (c) the date on which each snare mentioned in paragraph (a) or (b) was set;
  - (d) the date on which each snare mentioned in paragraph (b) was removed;
  - (e) in relation to each animal caught in a snare mentioned in paragraph (a) or (b)—
    - (i) the type of animal;
    - (ii) the date it was found;
  - (f) such other information as the Scottish Ministers may by order specify.
- (2) For the purposes of subsection (1)(a) and (b), the location of a snare is to be recorded—
  - (a) by reference to a map; or
  - (b) by such other means (for example, by means of a description) capable of readily identifying the location.
- (3) Any person who, without reasonable excuse, fails to comply with the duty under subsection (1) is guilty of an offence.
- (4) Any person who—
  - (a) is requested to produce the record kept under subsection (1) to a constable; and
  - (b) fails to do so within 21 days of being so requested,
 is guilty of an offence.
- (5) Subsection (1) does not apply in relation to any snare set in position by a person before the person is issued with an identification number.



## **11F Snaring: review and report to the Scottish Parliament**

- (1) The Scottish Ministers must carry out, or secure the carrying out by another person of, a review of the operation and effect of—
    - (a) section 11 and any orders made under that section (in so far as the section and the orders make provision as regards snaring);
    - (b) sections 11A, 11B, 11C, 11D and 11E and any orders made under those sections.
  - (2) A review must be carried out under subsection (1) no later than—
    - (a) 31st December 2016 (“the first review date”);
    - (b) the end of the period of 5 years beginning with the first review date; and
    - (c) the end of each subsequent period of 5 years.
  - (3) In carrying out a review under subsection (1), the matters that must be considered include whether in the opinion of the Ministers (or, if the review is being carried out by another person, that person) amendment of this Act or enactment of other legislation is appropriate.
  - (4) In carrying out a review under subsection (1), the Scottish Ministers (or, if the review is being carried out by another person, that person) must consult such persons and organisations as they consider (or, as the case may be, the other person considers) have an interest in it.
  - (5) The Scottish Ministers must, as soon as practicable after a review is carried out under subsection (1), lay a report of the review before the Scottish Parliament.”.
- (4) In section 16(3) (certain offences not committed if activity done in accordance with licence), after “11(1), (2) and (3C)(a)” insert “, 11C”.
- (5) In section 17 (false statements made for obtaining registration or licence etc.)—
  - (a) in the title, after “registration” insert “, identification number”,
  - (b) after “7(1)” insert “, an identification number under section 11A(4)”.

### *Non-native species etc.*

## **14 Non-native species etc.**

- (1) The 1981 Act is amended as follows.
- (2) In section 14 (introduction of new species etc.)—
  - (a) for subsections (1) to (2) substitute—
    - “(1) Subject to the provisions of this Part, any person who—
      - (a) releases, or allows to escape from captivity, any animal—
        - (i) to a place outwith its native range; or
        - (ii) of a type the Scottish Ministers, by order, specify; or
      - (b) otherwise causes any animal outwith the control of any person to be at a place outwith its native range,

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is guilty of an offence.

- (2) Subject to the provisions of this Part, any person who plants, or otherwise causes to grow, any plant in the wild at a place outwith its native range is guilty of an offence.
- (2A) Subsection (1) does not apply to the following animals where those animals are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting—
- (a) common pheasant;
  - (b) red-legged partridge.
- (2B) The Scottish Ministers may, by order, specify—
- (a) other types of animals to which subsection (1)(a)(i) or (1)(b) does not apply; and
  - (b) types of plants to which subsection (2) does not apply.
- (2C) The Scottish Ministers may, by order, disapply subsection (1) or (2) in relation to—
- (a) any person specified in the order;
  - (b) any conduct undertaken for the purposes of any enactment (including any enactment contained in or made under an Act of the Scottish Parliament) so specified; or
  - (c) any conduct authorised by, under or in pursuance of any such enactment.
- (2D) An order under subsection (1)(a)(ii), (2B) or (2C) may make different provision for different cases and, in particular, for—
- (a) different types of animal or plant;
  - (b) different circumstances or purposes;
  - (c) different persons;
  - (d) different times of the year; and
  - (e) different areas or places.”,
- (b) in subsection (3), for “prove” substitute “show”,
- (c) subsections (5) and (6) are repealed.
- (3) After section 14ZB (codes of practice in connection with invasive non-native species: England and Wales) insert—

**“14ZC Prohibition on keeping etc. of invasive animals or plants**

- (1) Subject to the provisions of this Part, any person who keeps, has in the person’s possession, or has under the person’s control—
- (a) any invasive animal of a type which the Scottish Ministers, by order, specify; or
  - (b) any invasive plant of a type so specified,
- is guilty of an offence.
- (2) An order under subsection (1) may make different provision for different cases and, in particular, for—
- (a) different types of invasive animal or invasive plant;

- (b) different circumstances or purposes;
  - (c) different persons;
  - (d) different times of the year; and
  - (e) different areas or places.
- (3) Subject to subsection (4), it is a defence to a charge of committing an offence under subsection (1) to show that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (4) Where the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged must not, without leave of the court, be entitled to rely on the defence unless, within a period ending 7 days before the hearing, the person has served on the prosecutor a notice giving such information or assisting in the identification of the other person as was then in the person's possession.
- (5) The Scottish Ministers may, in an order under subsection (1), make provision for or in connection with the compensation of persons who, at the time of the coming into force of the order, may no longer keep, have in their possession or have under their control, an animal or plant.”.
- (4) In section 14A (prohibition on sale etc. of certain animals or plants)—
- (a) in the title, for “certain” substitute “invasive”,
  - (b) for subsection (1) substitute—
    - “(1) This section applies to—
    - (a) any type of invasive animal; or
    - (b) any type of invasive plant,
    - the Scottish Ministers, by order, specify.”,
  - (c) for subsection (3) substitute—
    - “(3) An order under subsection (1) may make different provision for different cases and, in particular, for—
    - (a) different types of invasive animal or invasive plant;
    - (b) different circumstances or purposes;
    - (c) different persons;
    - (d) different times of the year; and
    - (e) different areas or places.”.
- (5) For section 14B (guidance: non-native species) substitute—

**“14B Notification of presence of invasive animals or plants etc.**

- (1) The Scottish Ministers may, by order, make provision about the notification of the presence of—
- (a) invasive animals; or
  - (b) invasive plants,
- at any specified place outwith their native range where persons are, or become, aware of the presence of such animals or plants.

- (2) An order under subsection (1) may make provision for, or in connection with—
- (a) the persons (or types of persons) who must make a notification;
  - (b) the circumstances in which a notification must be made;
  - (c) the times of the year when a notification must be made;
  - (d) the persons to whom a notification must be made;
  - (e) the form and method of any notification; and
  - (f) the period within which any notification must be made.
- (3) An order under subsection (1) may require a person (or type of person) to make a notification only if the Scottish Ministers consider that the person (or that type of person) has or should have knowledge of, or is likely to encounter, the invasive animal or invasive plant to which the order relates.
- (4) An order under subsection (1) may make different provision for different cases and, in particular, for—
- (a) different types of invasive animal or invasive plant;
  - (b) different circumstances or purposes;
  - (c) different persons;
  - (d) different times of the year; and
  - (e) different areas or places.
- (5) A person who, without reasonable excuse, fails to make a notification in accordance with the requirements of an order made under subsection (1) is guilty of an offence.”.

## 15 Non-native species etc.: code of practice

After section 14B (notification of presence of invasive animals or plants etc.) of the 1981 Act insert—

### “14C Non-native species etc.: code of practice

- (1) The Scottish Ministers may make a code of practice for the purpose of providing practical guidance in respect of—
- (a) the application of any of sections 14, 14ZC, 14A and 14B;
  - (b) the application of any order made under any of those sections;
  - (c) species control agreements;
  - (d) species control orders;
  - (e) licences granted under section 16(4)(c).
- (2) A code of practice may, in particular, provide guidance on—
- (a) how Scottish Natural Heritage, the Scottish Environment Protection Agency, the Forestry Commissioners and the Scottish Ministers should co-ordinate the way in which they exercise their respective functions in relation to animals or plants which are outwith their native range;
  - (b) which species, sub-species, varieties or races of animal or plant, or hybrids of animals or plants, are considered to be particular types of animals or plants for the purposes of—
    - (i) this section;

- (ii) section 14, 14ZC, 14A or 14B;
  - (iii) any order made under any of those sections;
  - (iv) species control agreements;
  - (v) species control orders;
  - (vi) the code;
  - (c) the native range of any type of animal or plant;
  - (d) the circumstances in which any type of animal is considered to be—
    - (i) in captivity; or
    - (ii) under the control or otherwise of a person at a place outwith its native range;
  - (e) the circumstances in which a type of plant is considered to be growing in the wild outwith its native range, and conduct that would cause any type of plant to grow in the wild;
  - (f) the circumstances in which a type of invasive animal or plant is considered to be kept in a person's possession or under a person's control;
  - (g) which types of animals or plants are invasive and the circumstances (if any) in which any such type of animal or plant is not considered to be invasive;
  - (h) best practice (where permitted) for—
    - (i) keeping animals of any type which are invasive or which are kept at a place from which they may not be put outwith the control of any person;
    - (ii) keeping plants of any type which are invasive or which are kept at a place outwith their native range;
    - (iii) releasing animals of any type from captivity; and
    - (iv) planting, or otherwise causing to grow, any type of plant in the wild;
  - (i) best practice for—
    - (i) containing, capturing or killing animals of any type which are outwith the control of any person and which are—
      - (A) at a place outwith their native range; or
      - (B) animals of a type specified in an order made under section 14(1)(a)(ii);
    - (ii) containing, uprooting or destroying plants of any type which are growing in the wild outwith their native range; and
    - (iii) transferring animals or plants of any type which are not permitted to be kept by virtue of section 14ZC into the custody of Scottish Natural Heritage or any other person (and for keeping such animals or plants prior to the transfer);
  - (j) the making and content of species control agreements;
  - (k) the making, content of and enforcement of species control orders.
- (3) The Scottish Ministers may revoke, replace or revise a code of practice.
- (4) The first code of practice, and any replacement code of practice, made under this section—
- (a) requires to be laid before, and approved by resolution of, the Scottish Parliament; and

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- (b) comes into effect on such date after approval under paragraph (a) as is specified in the code.
- (5) Any revision to a code of practice (or revocation of a code of practice which is not being replaced) must—
  - (a) be laid before the Scottish Parliament; and
  - (b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).
- (6) The Scottish Parliament may, before any such revision or revocation comes into effect, resolve that it is not to come into effect.
- (7) The Scottish Ministers must publish a code of practice (or any replacement or revision) made under this section no later than the day before the code (or replacement or revision) is to come into effect.
- (8) Before making, revoking, replacing or revising a code of practice, the Scottish Ministers must consult—
  - (a) Scottish Natural Heritage; and
  - (b) any other person appearing to them to have an interest in the code.
- (9) A person's failure to comply with a provision of a code of practice—
  - (a) does not of itself render the person liable to proceedings of any sort; but
  - (b) may be taken into account in determining any question in any such proceedings.
- (10) In any proceedings for an offence under section 14, 14ZC, 14A, 14B or 14K—
  - (a) failure to comply with a relevant provision of a code of practice may be relied upon as tending to establish liability;
  - (b) compliance with a relevant provision of a code of practice may be relied upon as tending to negative liability.”.

## 16 Species control orders etc.

After section 14C of the 1981 Act (non-native species etc.: code of practice) (inserted by section 15) insert—

### “14D Power to make species control orders

- (1) A relevant body may make an order (a “species control order”) in respect of premises where—
  - (a) it is satisfied of the presence on the premises of—
    - (i) an invasive animal at a place outwith its native range; or
    - (ii) an invasive plant at a place outwith its native range; and
  - (b) any of subsections (2) to (4) applies.
- (2) This subsection applies where—
  - (a) the relevant body has offered to enter into an agreement with the owner or, as the case may be, occupier of the premises to control or eradicate—
    - (i) invasive animals outwith their native range; or

- (ii) invasive plants outwith their native range,  
on the premises (referred to in this section as a “species control agreement”);
  - (b) 42 days have elapsed since the date of the offer; and
  - (c) the owner or occupier has refused or otherwise failed to enter into the agreement.
- (3) This subsection applies where—
  - (a) a person has entered into a species control agreement with the relevant body; and
  - (b) the person has failed to comply with the terms of the agreement.
- (4) This subsection applies where the relevant body has failed to ascertain the name or address of any owner or occupier of the premises (having made reasonable efforts to do so) and accordingly has not been able to offer to enter into a species control agreement.
- (5) Subsection (4) does not apply unless—
  - (a) the relevant body has given notice in accordance with subsection (6) stating that it wishes to offer to enter into a species control agreement;
  - (b) 48 hours have passed since the notice was given; and
  - (c) no owner or occupier of the premises has identified themselves to the relevant body.
- (6) A notice under this subsection must be addressed to “The owners and any occupiers” of the premises (describing it) and a copy of it must be affixed to some conspicuous object on the premises (in so doing the relevant body is to be treated as having provided notice to each owner or occupier whose name and address is unknown).

#### **14E Emergency species control orders**

- (1) Where a relevant body considers that the making of a species control order is urgently necessary, the relevant body may, despite section 14D(1)(b), make a species control order whether or not any of subsections (2) to (4) of section 14D apply (such an order is referred to in this Part as an “emergency species control order”).
- (2) An emergency species control order expires 49 days after it is made.

#### **14F Content of species control orders**

- (1) A species control order must—
  - (a) describe the premises to which it relates;
  - (b) be accompanied by a map on which the premises to which it relates are delineated;
  - (c) specify the type of invasive animal or plant in question;
  - (d) specify—
    - (i) any operations which are to be carried out on the premises for the purpose of controlling or eradicating the type of invasive animal or plant in question;
    - (ii) the person who is to carry out the operations; and

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- (iii) how and when the operations are to be carried out;
  - (e) specify any operations which must not be carried out on the premises (referred to in this Part as “excluded operations”);
  - (f) specify the date on which the order is to come into effect and the period for which it is to have effect; and
  - (g) set out the circumstances in which an appeal may be made under section 14H against either the decision to make the order or the terms of the order.
- (2) A species control order—
- (a) may provide for the making of payments by the relevant body making the order;
  - (b) other than an emergency species control order, may provide for the making of payments by the owner or occupier of the premises to which the order relates,
- to any person in respect of reasonable costs incurred by a person carrying out an operation under the order.

#### **14G Notice of species control orders**

- (1) A relevant body making a species control order must give notice of the making of the order—
- (a) to the owner and any occupier of the premises to which the order relates; and
  - (b) where the relevant body is a body other than the Scottish Ministers, to the Scottish Ministers.
- (2) Notice must—
- (a) be in writing;
  - (b) specify the relevant body’s reasons for making the order;
  - (c) attach a copy of the order; and
  - (d) where the order is an emergency species control order, state that fact.

#### **14H Appeals in connection with species control orders**

- (1) Any owner or occupier of premises to which a species control order relates may appeal to the sheriff if aggrieved by—
- (a) a decision of a relevant body to make the species control order; or
  - (b) the terms of such an order.
- (2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which the relevant body gave notice to the appellant of the decision being appealed.
- (3) The sheriff may suspend any effect of an emergency species control order pending the determination of an appeal.
- (4) The sheriff must determine an appeal under subsection (1) on the merits rather than by way of review and may do so by—
- (a) affirming the order in question;



- (b) directing the relevant body to amend the order in such manner as the sheriff may specify;
- (c) directing the relevant body to revoke the order; or
- (d) making such other order as the sheriff thinks fit.

(5) A decision of the sheriff on appeal is final except on a point of law.

#### **14I Coming into effect of species control orders**

Unless a species control order specifies a later date under section 14F(1)(f), such an order has effect from—

- (a) in the case where an order is an emergency species control order, the giving of notice in accordance with section 14G;
- (b) in any other case—
  - (i) the expiry of the time limit for appealing against the decision to make the order; or
  - (ii) where such an appeal is made, its withdrawal or final determination.

#### **14J Review of species control orders**

- (1) A relevant body which has made a species control order may, when it thinks fit, review the order prior to its expiry for the purposes of determining whether it should make an order revoking the order.
- (2) If, on completion of a review, the relevant body decides that the species control order should be revoked, it may make an order to that effect.
- (3) The making of an order to revoke a species control order does not prevent a relevant body subsequently making a species control order in relation to the same premises.

#### **14K Offences in relation to species control orders**

- (1) Any person who, without reasonable excuse, fails to carry out, in the manner required by a species control order, an operation which the person is required by the order to carry out is guilty of an offence.
- (2) Any person who intentionally obstructs any person from carrying out an operation required to be carried out under a species control order is guilty of an offence.
- (3) Any person who, without reasonable excuse, carries out, or causes or permits to be carried out, any excluded operation is guilty of an offence.

#### **14L Enforcement of operations under species control orders**

- (1) This section applies where a relevant body considers—
  - (a) that any operation required to be carried out by a species control order it has made has not been carried out within the period or by the date specified in it; or

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- (b) that any such operation has been carried out otherwise than in the manner required under the order.
- (2) The relevant body—
- (a) may carry out the operation, or such further work as is necessary to ensure that it is carried out, in the manner required under the order;
  - (b) is not required to make any payment (and may recover any payments made) in pursuance of the species control order in relation to the operation in question; and
  - (c) may recover from the person whom the species control order required to carry out the operation any expenses reasonably incurred by it in doing so (less any payment which the relevant body is required to make in relation to the carrying out of the operation under the order by virtue of section 14F(2)(a)).

#### **14M Species control orders: powers of entry**

- (1) A person authorised in writing by a relevant body may enter any premises for any of the following purposes—
- (a) to determine whether or not to offer to enter into a species control agreement with the owner or, as the case may be, occupier of the premises;
  - (b) to determine whether or not to make or revoke a species control order;
  - (c) to serve notice to an owner or occupier of premises in accordance with section 14D(5)(a) or 14G;
  - (d) to ascertain whether an offence under section 14K is being, or has been, committed in relation to an order made by the relevant body;
  - (e) to carry out an operation or other work in pursuance of section 14L(2)(a).
- (2) A person so authorised to enter premises may not demand admission as of right to any land which is occupied unless—
- (a) the entry is for a purpose mentioned in subsection (1)(a) or (b) and at least 24 hours' notice of the intended entry has been given;
  - (b) the entry is for a purpose mentioned in subsection (1)(c) or (d); or
  - (c) the entry is for a purpose mentioned in subsection (1)(e) and at least 14 days' notice of the intended entry has been given.
- (3) Subsection (2) does not apply in relation to entry in connection with an emergency species control order.
- (4) Nothing in this section authorises any person to break any lock barring access to premises which the person is authorised to enter.

#### **14N Species control orders: entry by warrant etc.**

- (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for a person authorised by a relevant body to enter premises for a purpose mentioned in section 14M(1) and that—
- (a) admission to the premises has been refused;
  - (b) such refusal is reasonably apprehended;

- (c) the premises are unoccupied;
- (d) the occupier is temporarily absent from the premises;
- (e) the giving of notice under section 14M(2) would defeat the object of the proposed entry; or
- (f) the situation is one of urgency,

the sheriff or justice may grant a warrant authorising the person to enter premises (including lockfast places), if necessary using reasonable force.

- (2) In the cases of a warrant under subsection (1)(a) to (d), a sheriff or justice must not grant a warrant unless satisfied that notice of the intended entry has been given in the manner described in section 14M.
- (3) A warrant under this section—
  - (a) may be executed without notice; and
  - (b) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.
- (4) Any person authorised by a warrant to enter any premises must, if required to do so by the owner or occupier or anyone acting on the owner or occupier's behalf, show that person the warrant.
- (5) Any person authorised by a warrant to use reasonable force—
  - (a) must be accompanied by a constable when doing so; and
  - (b) may not use force against an individual.

#### **14O Species control orders: powers of entry: supplemental**

- (1) Any person who exercises a power of entry to premises in accordance with section 14M or 14N may—
  - (a) be accompanied by any other person; and
  - (b) take any machinery, other equipment or materials on to the premises, for the purpose of assisting the person in the exercise of that power.
- (2) A power specified in subsection (1) which is exercisable under a warrant is subject to the terms of the warrant.
- (3) Any person leaving any premises which have been entered in exercise of a power conferred by section 14M or a warrant granted under section 14N, being either unoccupied premises or premises from which the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as the person found the premises.
- (4) A relevant body must compensate any person who has sustained damage by reason of—
  - (a) the exercise by a person authorised by the relevant body of any powers of entry conferred on the person by section 14M or a warrant granted under section 14N; or
  - (b) the failure of a person so authorised to perform the duty imposed by subsection (3),unless the damage is attributable to the fault of the person who sustained it.

- (5) Any dispute as to a person's entitlement to compensation, or to the amount of such compensation, is to be determined by arbitration.

#### **14P Interpretation of sections 14 to 14O**

- (1) This section applies to sections 14 to 14O only.
- (2) Any reference to the native range of an animal or plant, or a type of animal or plant, is a reference to the locality to which the animal or plant of that type is indigenous, and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise) by any person.
- (3) The native range of a hybrid animal or plant is any locality within the native range of both parents of the hybrid animal or plant.
- (4) Any reference to an invasive animal or invasive plant, or type of such an animal or plant, is a reference to an animal or plant of a type which if not under the control of any person, would be likely to have a significant adverse impact on—
  - (a) biodiversity;
  - (b) other environmental interests; or
  - (c) social or economic interests.
- (5) Any reference to premises—
  - (a) includes reference to land (including lockfast places and other buildings), movable structures, vehicles, vessels, aircraft and other means of transport; but
  - (b) does not include reference to dwellings.
- (6) Any reference to a relevant body is a reference to—
  - (a) the Scottish Ministers;
  - (b) Scottish Natural Heritage;
  - (c) the Scottish Environment Protection Agency; or
  - (d) the Forestry Commissioners.
- (7) Any reference to an animal includes a reference to ova, semen and milt of the animal.
- (8) "Plant" includes fungi and any reference to a plant includes a reference to—
  - (a) bulbs, corms and rhizomes of the plant; and
  - (b) notwithstanding section 27(3ZA), seeds and spores of the plant."

#### **17 Non-native species etc.: further provision**

- (1) The 1981 Act is amended as follows.
- (2) In section 16 (power to grant licences), in subsection (4)(c), after "14" insert ", 14ZC".
- (3) In section 21 (penalties, forfeitures etc.)—
  - (a) in subsection (1) after "13" insert ", 14B",
  - (b) in subsection (4)—
    - (i) after "14" insert ", 14ZC",
    - (ii) in paragraph (a), for "six" substitute "12",

- (c) after that subsection insert—
  - “(4ZA) Any person guilty of an offence under section 14K is liable—
    - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding £40,000, or to both;
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”,
  - (d) in subsection (6)(b) for “or 14A” substitute “, 14ZC, 14A, 14B or 14K”.
- (4) In section 22(1) (power to vary schedules)—
  - (a) in paragraph (b) the words “or Part I of Schedule 9” are repealed,
  - (b) in paragraph (c) the words “or Part II of Schedule 9” are repealed.
- (5) In section 24 (functions of GB conservation bodies), after subsection (4) insert—
  - “(4A) The functions of Scottish Natural Heritage include the power to advise or assist—
    - (a) another relevant body exercising functions under section 14L(2)(a); and
    - (b) a person authorised to enter premises under section 14M exercising functions under that section.”.
- (6) In section 26 (regulations, orders, notices etc.)—
  - (a) in subsection (1), for “this Part” substitute “a provision of this Part other than section 14D”,
  - (b) in subsection (4)—
    - (i) for “this Part” substitute “a provision of this Part other than section 14D”,
    - (ii) in paragraph (a), after “2(6)” insert “, 14, 14ZC, 14A or 14B”,
    - (iii) in paragraph (b), after “section” insert “14, 14ZC, 14A, 14B,”,
  - (c) after that subsection, insert—
    - “(4A) The Scottish Ministers may make an order under section 14, 14ZC or 14A only where they have consulted—
      - (a) Scottish Natural Heritage; and
      - (b) any other person appearing to them to have an interest in the making of the order.
    - (4B) Subsection (4A) does not apply where the Scottish Ministers consider it necessary to make the order urgently and without consultation.”.
- (7) In section 70A (service of notices), after subsection (2) insert—
  - “(2A) Subsection (1)(cc) of the said section 271 shall not apply to a notice required to be served under section 14G.
  - (2B) Subsection (2) of the said section 271 shall not apply to a notice required to be served under section 14D(5)(a).”.
- (8) Schedule 9 (animals and plants to which section 14 applies) is repealed.

*Species licences***18 Licences under the 1981 Act**

- (1) The 1981 Act is amended as follows.
- (2) In section 16 (power to grant licences)—
- (a) in subsection (3)—
    - (i) the word “or” immediately after paragraph (g) is repealed,
    - (ii) after paragraph (h) insert “; or
      - (i) for any other social, economic or environmental purpose,”
  - (b) after subsection (3) insert—
 

“(3A) The appropriate authority shall not grant a licence under subsection (3)(i) unless it is satisfied—

    - (a) that undertaking the conduct authorised by the licence will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit; and
    - (b) that there is no other satisfactory solution.”
  - (c) subsection (8B) is repealed,
  - (d) for subsections (9) to (9ZC) substitute—
 

“(9) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 16A.

(9ZA) The Scottish Ministers must consult Scottish Natural Heritage before granting or modifying a licence under any of subsections (1) to (5).

(9ZB) Subsection (9ZA) does not apply in relation to licences granted under—

    - (a) paragraph (i), (j) or (k) of subsection (1);
    - (b) paragraph (f), (g) or (h) of subsection (3); or
    - (c) paragraph (c) of subsection (4).”
  - (e) subsection (13) is repealed.
- (3) After that section insert—

**“16A Delegation of licence-granting power: Scotland**

- (1) The Scottish Ministers may delegate their functions in relation to licences under section 16 to—
  - (a) Scottish Natural Heritage; or
  - (b) a local authority.
- (2) But a function may be delegated to a local authority only in so far as it relates to—
  - (a) the development of land within the meaning of section 26(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8); or
  - (b) the demolition of buildings within the meaning of section 55 of the Building (Scotland) Act 2003 (asp 8).

- (3) A delegation may be, to any degree, general or specific and may in particular relate to—
    - (a) a particular type of bird, other animal or plant;
    - (b) a particular licence or type of licence;
    - (c) a particular area.
  - (4) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.
  - (5) A delegation to—
    - (a) Scottish Natural Heritage under subsection (1)(a) is to be made by written direction;
    - (b) a local authority under subsection (1)(b) is to be made by order.
  - (6) A local authority which is delegated a function under subsection (1)(b) must, before granting or modifying a licence, consult Scottish Natural Heritage.
  - (7) The Scottish Ministers may modify or revoke a direction under subsection (5) (a).
  - (8) Where a direction or order under subsection (5) is revoked, any existing licence granted under the direction or order continues to have effect (unless the revoking direction or order provides otherwise).”
- (4) In section 26 (regulations, orders, notices etc.)—
- (a) in subsection (4)—
    - (i) after paragraph (a) insert—
      - “(aa) in the case of an order under section 16A(5)(b), shall consult Scottish Natural Heritage;”
    - (ii) in paragraph (b), after “14B,” (as inserted by section 17(6)(b)(iii)) insert “16A(5)(b) or”
    - (iii) in paragraph (c) after “may,” insert “except in the case of an order under section 16A(5)(b),”
  - (b) in subsection (5) after “Part” insert “, other than an order under section 16A(5)(b),”.

## 19 Amendment of Schedule 6 to the 1981 Act

In Schedule 6 to the 1981 Act (animals which may not be killed or taken by certain methods) the entries relating to the animals with the following common names are repealed—

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Bats, Horseshoe (all species),

Bats, Typical (all species),

Cat, Wild,

Dolphin, Bottle-nosed,

Dolphin, Common,

Dormice (all species),

Marten, Pine,  
Otter, Common,  
Polecat,  
Porpoise, Harbour (otherwise known as Common Porpoise).

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*Annual report on wildlife crime*

**20 Annual report on wildlife crime**

After section 26A of the 1981 Act insert—

**“26B Annual report on wildlife crime**

- (1) The Scottish Ministers must, after the end of each calendar year, lay before the Scottish Parliament a report on offences relating to wildlife.
- (2) The report may, in particular, include—
  - (a) information on the incidence and prosecution of such offences during the year to which the report relates;
  - (b) information on research and advice relating to wildlife which the Scottish Ministers consider relevant to such offences.
- (3) The report need only include information in relation to such offences relating to wildlife as the Scottish Ministers consider appropriate.
- (4) For the purposes of this section, an offence relating to wildlife is an offence—
  - (a) under Part 1 of this Act; or
  - (b) under any other enactment which the Scottish Ministers consider may have an impact on wildlife.”.

*Offence of knowingly causing or permitting certain offences*

**21 Offence of knowingly causing or permitting certain offences under the 1981 Act**

- (1) The 1981 Act is amended as follows.
- (2) In section 6 (sale etc. of live or dead wild birds, eggs etc.), after subsection (2), insert—
 

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section (other than subsections (1)(b) and (2)(b)) shall be guilty of an offence.”.
- (3) In section 7 (registration etc. of certain captive birds), after subsection (5), insert—
 

“(5A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section shall be guilty of an offence.”.
- (4) In section 15A (possession of pesticides), after subsection (2), insert—





**“69A Offences by Scottish partnerships etc.**

Where a Scottish partnership or other unincorporated association is guilty of an offence under Part 1 of this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;
- (b) in relation to an unincorporated association other than a Scottish partnership, any person who is concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”.

*Liability in relation to certain offences by others*

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

After section 18 of the 1981 Act insert—

**“18A Vicarious liability for certain offences by employee or agent**

- (1) This subsection applies where, on or in relation to any land, a person (A) commits a relevant offence while acting as the employee or agent of a person (B) who—
  - (a) has a legal right to kill or take a wild bird on or over that land; or
  - (b) manages or controls the exercise of any such right.
- (2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In any proceedings under subsection (2), it is a defence for B to show—
  - (a) that B did not know that the offence was being committed by A; and
  - (b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.
- (5) For the purposes of subsection (1)(b), management or control of the exercise of a right to kill or take any wild bird on or over land includes in particular management or control of any of the following—
  - (a) the operation or activity of killing or taking any such birds on or over that land;
  - (b) the habitat of any such birds on that land;
  - (c) the presence on or over that land of predators of any such birds;
  - (d) the release of birds from captivity for the purpose of their being killed or taken on or over that land.

- (6) In this section and section 18B, “a relevant offence” is—
- (a) an offence under—
    - (i) section 1(1), (5) or (5B);
    - (ii) section 5(1)(a) or (b); or
    - (iii) section 15A(1); and
  - (b) an offence under section 18 committed in relation to any of the offences mentioned in paragraph (a).

**18B Liability where securing services through another**

- (1) This subsection applies where, on or in relation to any land—
- (a) a person (A) commits a relevant offence;
  - (b) at the time the offence is committed, A is providing relevant services for a person (B); and
  - (c) B—
    - (i) has a legal right to kill or take a wild bird on or over that land;  
or
    - (ii) manages or controls the exercise of any such right.
- (2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In any proceedings under subsection (2), it is a defence for B to show—
- (a) that B did not know that the offence was being committed by A; and
  - (b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.
- (5) For the purposes of subsection (1)(b), A is providing “relevant services” for B—
- (a) if A manages or controls any of the following—
    - (i) the operation or activity of killing or taking any wild birds on or over that land;
    - (ii) the habitat of any such birds on that land;
    - (iii) the presence on or over that land of predators of any such birds;
    - (iv) the release of birds from captivity for the purpose of their being killed or taken on or over that land; and
  - (b) whether A is providing the services—
    - (i) by arrangement between A and B; or
    - (ii) by arrangement with or as employee or agent of any other person (C) who is providing or securing the provision of relevant services for B.
- (6) For the purposes of subsection (5)(b)(ii), C is providing or securing the provision of relevant services for B if C manages or controls any of the things mentioned in sub-paragraphs (i) to (iv) of subsection (5)(a).”.

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*Status: This is the original version (as it was originally enacted).*

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*Modifications and repeals relating to Part 2 and game licensing*

**25 Modifications and repeals relating to Part 2 and game licensing**

- (1) The modifications in Part 1 of the schedule have effect.
- (2) The enactments mentioned in the first column of Part 2 of the schedule are repealed to the extent specified in the second column.