



# Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

## PART 7

### GENERAL

VALID FROM 01/01/2012

#### 41 Crown application

- (1) The modifications of enactments made by this Act bind the Crown to the extent the enactments bind the Crown.
- (2) After section 27 of the 1946 Act, insert—

**“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.”
- (3) After section 66A of the 1981 Act, insert—

*Status: Point in time view as at 08/04/2011. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Wildlife and Natural Environment (Scotland) Act 2011, Part 7. (See end of Document for details)*

### **“66B Application of Part 1 to Crown: Scotland**

- (1) Subject to subsections (2) to (5), Part 1 (including regulations and orders made under it) bind the Crown.
- (2) No contravention by the Crown of any provision made by or under Part 1 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 that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (2), any provision made by or under Part 1 applies to persons in the public service of the Crown as it applies to other persons.
- (4) A species control order may be made under section 14D in relation to Crown land only with the consent of the appropriate authority.
- (5) The powers conferred by sections 14M and 19ZC are exercisable in relation to Crown land only with the consent of the appropriate authority.
- (6) In this section, “Crown land” means an interest in land which—
  - (a) belongs to Her Majesty in right of the Crown;
  - (b) belongs to Her Majesty in right of Her private estates;
  - (c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or
  - (d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.
- (7) In this section, the “appropriate authority”—
  - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
  - (b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;
  - (c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;
  - (d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;
  - (e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.
- (8) The references in subsections (6)(b) and (7)(c) to Her Majesty's private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

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(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

(4) After section 13 of the 1992 Act, insert—

**“13A Crown application: Scotland**

(1) This Act binds the Crown.

(2) No contravention by the Crown of any provision 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 that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), this Act applies to persons in the public service of the Crown as it applies to other persons.”.

(5) In section 44 of the 1996 Act—

(a) for subsection (1), substitute—

“(1) This Act binds the Crown, subject to such modifications as may be prescribed.”,

(b) after subsection (2), insert—

“(3) No contravention by the Crown of any provision made by or under 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 that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (3), this Act applies to persons in the public service of the Crown as it applies to other persons.

(5) The power conferred by section 15 of this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In subsection (5), “Crown land” means an interest in land which—

- (a) belongs to Her Majesty in right of the Crown;
- (b) belongs to Her Majesty in right of Her private estates;
- (c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or
- (d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.

(7) In subsection (5), the “appropriate authority”—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish

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- Administration who or, as the case may be, government department which manages the land;
- (c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;
  - (d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;
  - (e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.
- (8) The references in subsections (6)(b) and (7)(c) to Her Majesty's private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).
- (9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

#### 42 Ancillary provision

- (1) The Scottish Ministers may by order made by statutory instrument make such incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may modify any enactment.
- (3) A statutory instrument containing an order under subsection (1) is (except where subsection (4) applies) subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

#### 43 Commencement and short title

- (1) The provisions of this Act (other than section 1, section 42 and this section) come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) An order under subsection (1) may—
  - (a) make different provision for different purposes,
  - (b) make such transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (3) This Act may be cited as the Wildlife and Natural Environment (Scotland) Act 2011.

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