

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Part 2 – Wildlife under the 1981 Act

Section 14 – Non-native species etc.

97. **Section 14** of the Act amends sections 14 and 14A of the 1981 Act and inserts new sections 14ZC and 14B of that Act.

Subsection (2)

98. Subsection (2) substitutes section 14(1) to 14(2D) of the 1981 Act.
99. It is an offence under inserted section 14(1)(a)(i) to release or allow to escape from captivity any animal to a place outwith its native range. This replaces the former offence which relates to the release or escape into the wild of an animal which is of a kind not ordinarily resident in and is not a regular visitor to Great Britain in a wild state. Section 14P(2) and (3) of the 1981 Act, as inserted by section 15 of the Act, provides for the meaning of the native range of animals and plants.
100. It is an offence under inserted section 14(1)(a)(ii) to release or allow to escape from captivity any other animal specified in an order made by the Scottish Ministers under that section and inserted section 14(2D). This replaces the former offence which relates to an animal of a kind listed in Schedule 9 to the 1981 Act. The new power relates to release of an animal within its native range. For example, it might enable Ministers to control the release of a raptor within its native range to prevent harm to the wild population from increased competition for food.
101. It is an offence under inserted section 14(1)(b) of the 1981 Act to cause any animal outwith the control of any person to be at place outwith its native range. The offence applies where an animal that is not in captivity for the purposes of inserted section 14(1) is enabled by some act or omission to move to a new place outwith its native range.
102. Inserted section 14(2A) has the effect that an offence is not committed under inserted section 14(1) if the common pheasant or red-legged partridge are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting. A release of any other non-native bird or for any other purpose is unlawful, unless authorised by an order made by the Scottish Ministers under inserted section 14(2B), or by a licence granted under section 16 of the 1981 Act.
103. It is an offence under new section 14(2) of the 1981 Act to plant or otherwise cause to grow any plant in the wild outwith its native range. This replaces the former offence which relates to a plant of a kind listed in Schedule 9 to the 1981 Act.

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

104. Inserted section 14(2B) and (2D) of the 1981 Act enables the Scottish Ministers to specify a plant or animal to which the offences in inserted section 14(1) and (2) do not apply. The power can be used to make lawful the release of animals outwith their native range. For example, an order might make possible the re-introduction into any part of Scotland of a formerly native animal such as the European beaver.
105. Inserted section 14(2C) and (2D) of the 1981 Act enables the Scottish Ministers to specify a person or conduct (that conduct being undertaken for the purposes of any enactment or authorised by any such enactment) to which the offences in inserted section 14(1) and (2) do not apply. For example, an order might take out of the scope of the offence approved non-native planting in managed woodland.
106. Subsection (2)(b) amends the defence in section 14(3) of the 1981 Act to make it consistent with the other statutory defences in Part 1 of the 1981 Act. The accused must show (and not as before ‘prove’) that he took all reasonable steps and exercised all due diligence to avoid committing the offences in inserted sections 14(1) and (2).
107. Subsection (2)(c) repeals the provisions enabling the Scottish Ministers to authorise persons to enter any land to ascertain whether an offence in section 14 of the 1981 Act is being, or has been, committed. A wildlife inspector appointed by Ministers under section 19ZC of the 1981 Act has the same power, so the repeal removes an unnecessary duplication.
108. See also section 17(6) of the Act which modifies the conditions which must be satisfied before an order under section 14 of the 1981 Act can be made.

Subsection (3)

109. Subsection (3) of the Act inserts new section 14ZC into the 1981 Act.
Prohibition on keeping etc. - inserted section 14ZC of the 1981 Act
110. Section 14ZC of the 1981 Act enables the Scottish Ministers to prohibit the keeping of invasive animals or plants, by specifying the type of animal or plant in an order subject to negative procedure.
111. Subsection (1) provides that it is an offence to keep a prohibited animal, and subsections (3) and (4) provide for it to be a defence for the accused to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence. Subsection (5) enables the Scottish Ministers to provide by order for the payment of compensation to people who can no longer keep an animal or plant as a result of the making of a prohibition order.
112. Orders made under section 14ZC are subject to negative procedure, for which see section 26 of the 1981 Act as modified by section 17(6) of the Act.
113. Keeping, and release, measures have been taken under the Destructive Imported Animals Act 1932 and the Import of Live Fish (Scotland) Act 1978, both repealed by Part 2 of the Schedule.

Subsection (4)

114. Subsection (4) changes the powers of the Scottish Ministers in section 14A of the 1981 Act to prohibit the sale and marketing of certain animals and plants. The amended power is exercisable in respect of an invasive animal or plant and not as before in respect of the release of the animal or plant that is prohibited under section 14 of that Act.

Subsection (5)

115. Subsection (5) substitutes a new section 14B of the 1981 Act, with the effect that the section formerly providing for guidance on non-native species is repealed (but see section 15 of the Act).

Notification of presence of invasive animals etc. - inserted section 14B of the 1981 Act

116. Section 14B of the 1981 Act enables the Scottish Ministers to require by order certain persons to notify the presence of an invasive animal or invasive plant at a place outwith the native range of the plant or animal. Notification can only be required where the Scottish Ministers consider that the person or type of person to be subject to the requirement has, or should have, knowledge of, or is likely to encounter, the specified invasive animal or plant.
117. Subsection (5) provides for it to be an offence under the 1981 Act (see section 21 of that Act for penalties) to fail without reasonable excuse to notify the presence of a plant or animal as required under the inserted section.
118. Orders made under section 14B are subject to negative procedure, for which see section 26 of the 1981 Act as modified by section 17(6) of the Act.