



Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

PART 2

WILDLIFE UNDER THE 1981 ACT

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

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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—

“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

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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	<i>Lepus timidus</i>
Hare, brown	<i>Lepus europaeus</i>
Rabbit	<i>Oryctolagus cuniculus</i> ”.

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”.