

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 of Schedule 5 – Constable’s search warrant power extended to certain other Acts

150. **Part 4** of Schedule 5 removes certain disparities between the four Acts’ enforcement powers. Currently, only police have powers of entry under the Deer Act 1991 and the Protection of Badgers Act 1992 (except where there is a licence agreement that specifies that authorised officials of English Nature or the Secretary of State may enter the premises to monitor the terms of the licence). Authorised inspectors have certain limited powers of entry in connection with the enforcement of the Destructive Imported Animals Act 1932 (namely, police can seize wild musk rats, coypu and mink). Under the Conservation of Seals Act 1970 police have powers to stop and search persons that are suspected of an offence of killing or injuring seals without a licence, and authorised persons representing Secretary of State may enter land for the purpose of obtaining information relating to seals. Part 4 of Schedule 5 therefore extends police powers of entry under warrant found in section 19(3) of the 1981 Act to the investigation of offences under these other wildlife licensing Acts.

Section 53: Wildlife offences: time limit for proceedings

151. This section introduces Schedule 6. Schedule 6 alters the present requirement to bring summary proceedings for certain offences concerning wildlife and habitats within six months of the commission of the offence. In relation to the legislation detailed in the Schedule, summary proceedings must be brought within six months of the acquisition of evidence sufficient in the prosecutor’s opinion to warrant proceedings, and in any event within two years of the commission of the offence.

Section 54: Application of Part 1 of the 1981 Act to Crown

152. This section introduces a new section 66A into the 1981 Act which, with specified exceptions, applies the provisions of Part 1 of the Act to the Crown. This is required by European law obligations under the Wild Birds Directive (79/409/EEC) and the Habitats Directive (92/42/EEC).
153. Where the Crown, for example a government department, contravenes any provision of Part 1, it will not be criminally liable for the action (or lack of action) in question; rather it will be open to anyone with an interest in the contravention to apply to the High Court for a declaration that the activity was unlawful. However, Part 1 will apply to people in the service of the Crown, such as civil servants, as it applies to any other person. Part 1 will not apply to the Queen in her personal capacity and this includes Her Majesty in right of the Duchy of Lancaster and the Duke of Cornwall.

*These notes refer to the Natural Environment and Rural Communities
Act 2006 (c.16) which received Royal Assent on 30 March 2006*

154. Powers of entry for enforcement purposes granted to police constables and wildlife inspectors under sections 18A to 19XA of the 1981 Act will not apply to premises occupied by the Crown. For example, there will be no rights of entry for the purposes of enforcing the 1981 Act over land occupied by the Ministry of Defence.