

NATURE CONSERVATION (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Protection of Wildlife Schedule 6

Protection of Wildlife

Protection of Plants: Offences

369. [Paragraph 11](#) amends section 13 of the 1981 Act. It amends the law in relation to the protection of wild plants by introducing offences of recklessness and of knowingly causing or permitting an act to be carried out. It also lists certain qualifications which must be met by a person (accused of having committed an offence related to wild plants), who wishes to use the statutory defence provided under section 13(3) of the 1981 Act. The key changes effected by paragraph 11 are:

- a new offence of recklessly carrying out acts which are prohibited by section 13(1);
- additional protection for Schedule 8 plants. The new provision at section 13(1)(a) (ii) makes it an offence, in particular, to pick or destroy seeds or spores which are attached to such plants. The collection of seed may therefore take place only under licence and with the permission of the owner or occupier of the land on which they are growing. It should be noted that the term “wild plant” as used in the 1981 Act includes fungi and non-vascular plants (bryophytes, lichens, stoneworts and algae), hence the reference to spores as well as seeds;
- a revision of the existing statutory defence that an act, which results in unlawful damage to wild plants, was the incidental result of a lawful operation. The changes under this sub-paragraph provide that, if the unlawful damage caused by an unlawful act is the incidental result of a lawful operation or activity, a defence can now only be relied upon where a person took reasonable precautions for the purpose of avoiding carrying out the unlawful act or that the person did not and could not reasonably have foreseen that such action would result in an offence being committed and that steps were taken to minimise the damage once it became apparent; and
- the new offence of knowingly causing or permitting another person to carry out an act which is unlawful in relation to wild plants. This principle is already found elsewhere in the 1981 Act but has now also been inserted into section 13.