

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Part 2 – Wildlife under the 1981 Act

Section 15 – Non-native species etc.: code of practice

Non-native species: code of practice etc. - inserted section 14C of the 1981 Act

120. Section 14C enables the Scottish Ministers to issue codes of practice for the purpose of providing practical guidance in respect of the release, keeping, sale and notification offences in the 1981 Act, and in respect of species control agreements and species control orders (and related offences), and related matters. For example, a code could offer guidance on how far an animal temporarily released by any person (such as a raptor in a falconry display) remains under the control of that person for the purposes of the release offence. The Code may also provide guidance on how SNH, Scottish Environment Protection Agency, the Forestry Commissioners and the Scottish Ministers should co-ordinate the way they deal with non-native animals and plants. In addition the code will provide for best practice on a variety of issues.
121. The Scottish Ministers must consult with Scottish Natural Heritage and any other persons appearing to them to have an interest before making, replacing or revising a code. The first code of practice and any replacement code are subject to affirmative procedure. Revisions to the code of practice are subject to negative procedure.
122. Guidance in a code of practice issued under section 14C is not binding. It can however be taken into account in determining any question in any proceedings, and in a criminal prosecution for a relevant offence the court may have regard to compliance with the code when deciding whether or not the accused is liable for the offence.