

# **WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011**

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## **EXPLANATORY NOTES**

### **THE ACT – COMMENTARY ON SECTIONS**

#### **Part 2 – Wildlife under the 1981 Act**

##### ***Section 16 – Species control orders etc.***

123. **Section 16** of the Act inserts new sections 14D to 14P of the 1981 Act. Sections 14D to 14O of the 1981 Act provide for species control orders, and section 14P provides for the interpretation of terms used in sections 14 to 14O of that Act.

##### **Power to make species control orders- inserted section 14D of the 1981 Act**

124. Section 14D of the 1981 Act enables any of the Scottish Ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency or the Forestry Commissioners (each of which is a ‘relevant body’ as defined in inserted section 14P(6)) to make a species control order for premises when the relevant body is satisfied of the presence on the premises of an invasive animal or plant at a place outwith its natural range.
125. The relevant body must give any owner or occupier it has identified at least 42 days in which to enter into a voluntary agreement before it can make a species control order. If such an agreement is entered into then an order can only be made on default. Section 14D also provides for a statutory notice where an owner or occupier cannot be identified.

##### **Emergency species control orders- inserted section 14E of the 1981 Act**

126. Section 14E of the 1981 Act enables a relevant body to make a species control order without agreement or notice under section 14D where the body is satisfied that the making of the order is urgently necessary. Any such emergency order expires 49 days after it is made, to allow sufficient time for the making of a non-emergency order if appropriate.

##### **Content of species control orders - inserted section 14F of the 1981 Act**

127. Section 14F of the 1981 Act provides for the contents of species control orders. It enables a relevant body to specify what must be done by whom and by when in order to control or eradicate an invasive species, such as the removal of Japanese knotweed. It enables the body to specify preventative measures (an ‘excluded operation’), such as a ban on strimming knotweed where there is a high risk that such an operation would cause the plant to spread. Lastly, it enables the relevant body to provide for who is to pay for control and eradication measures, which might include the owner or occupier of the premises subject to the order.

**Notice of species control orders - inserted section 14G of the 1981 Act**

128. Section 14G of the 1981 Act provides for notice of the making of a species control order to be given to the owner and any occupier of premises, and if appropriate by a relevant body to the Scottish Ministers. The notice must give reasons for the making of the species control order, and set out where applicable that the order is an emergency order.

**Appeals in connection with species control orders-- inserted section 14H of the 1981 Act**

129. Section 14H of the 1981 Act enables an owner or occupier whose premises are subject to a species control order to appeal to the sheriff within 28 days of being given notice of the making of the order. The sheriff must consider the merits of the order, may suspend any effect of an emergency order, and will dispose of the appeal as he or she thinks fit. Further appeal from the decision of the sheriff is on a point of law only.

**Coming into effect of species control orders - inserted section 14I of the 1981 Act**

130. Section 14I of the 1981 Act provides that an emergency species control order has effect on the giving of notice under section 14G, and any other order has effect either on the expiry of the 28 day period for appeal under section 14H or where an appeal is made or the withdrawal or determination of the appeal.

**Review of species control orders - inserted section 14J of the 1981 Act**

131. Section 14J of the 1981 Act enables a relevant body to review a species control order made by the body, and if appropriate revoke the order. An order might be revoked because it has been complied with before it would otherwise expire, or because an operation or excluded operation will for any reason no longer deliver the intended outcome (in which case it might be replaced by a subsequent order).

**Offences in relation to species control orders - inserted section 14K of the 1981 Act**

132. Section 14K of the 1981 Act makes it an offence under that Act to fail without reasonable excuse to carry out an operation required under a species control order, to carry out an excluded operation, or to intentionally obstruct any person carrying out an operation required to be carried out under an order. Section 17(3)(c) of the Act inserts new section 21(4ZA) of the 1981 Act which provides for penalties on conviction for such an offence.

**Enforcement of operations under species control orders - inserted section 14G of the 1981 Act**

133. Section 14L of the 1981 Act enables a relevant body on default to carry out an operation required by a species control order. The body is not required to make any payment that would otherwise be required under the order, and may recover such payments and any additional costs incurred by the body in enforcing the order.

**Species control orders: powers of entry - inserted section 14M of the 1981 Act**

134. Section 14M of the 1981 Act enables persons authorised by a relevant body to enter premises, giving notice where required, for the purposes of determining whether to enter into a species control order, whether to make or revoke an order, to serve any required notice, to ascertain whether an offence is being or has been committed, and to carry out operations required in connection with the order.
135. Inserted section 14P(5) of the 1981 Act defines premises for the purposes of sections 14 to 14O, with the effect that the powers of entry do not include power to enter a dwelling.

**Species control orders: entry by warrant etc. - inserted section 14N of the 1981 Act**

136. Section 14N of the 1981 Act sets out when a sheriff may grant a warrant to an authorised person to use a power of entry that is otherwise unauthorised under section 14M, and the effect of such a warrant.

**Species control orders: powers of entry: supplemental - inserted section 14O of the 1981 Act**

137. Section 14O of the 1981 Act sets out who may accompany an authorised person taking entry under a warrant granted under section 14N of that Act, and what that person may take on to the premises. It also provides for compensation to be paid for damage caused when entry is taken, unless the damage is attributable to the person who sustained it.

**Interpretation of sections 14 to 14O of the 1981 Act - inserted section 14P of the 1981 Act**

138. Section 14P of the 1981 Act provides for the meanings of native range, invasive, premises and relevant body. It also makes further provision for the meanings of animal and plant.