

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Part 2 – Wildlife under the 1981 Act

Section 6 – Protection of wild hares etc.

Subsection (2)

Exceptions to s.10A - inserted section 10B of the 1981 Act

49. Subsection (1) of section 10B provides a defence to the offence of killing an animal during close season where the accused can show that the animal in question was too seriously disabled to recover. That defence will only apply if the disability to the animal was not caused by an unlawful act of the accused.
50. Subsection (2) of section 10B provides a defence to the offence of taking a seriously disabled animal during close season where the accused can show that the animal was taken for the purpose of tending it and releasing it when no longer disabled. The defence can only be relied on by where the disability had not been caused by an unlawful act of the accused, and the accused had a legal right to take the animal or permission from a person with such a right. The Act does not however confer or alter any legal right to kill or take an animal, or to give permission to do so), In broad terms, a legal right to kill or take an animal on land arises from ownership or lawful occupation of the land or of an interest in the land.
51. Subsections (3) to (6) of section 10B provide for it to be a defence to the offence of killing or injuring an animal during close season for the accused to show that the action was necessary to prevent serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries. The defence can only be relied on by an “authorised person”, as defined in section 27 of the 1981 Act to include the owner or occupier of the land involved and persons authorised by the local authority.
52. Subsection (7) of section 10B provides that nothing in section 10A shall make unlawful anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948 (damage to crops etc.), or under or in pursuance of an order under the Animal Health Act 1981 (control of animal disease).