

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.

43. **Section 6** of the Act inserts new sections 10A and 10B and Schedule 5A into the 1981 Act. These provisions provide in particular for close seasons for wild mountain hares and brown hares, for offences in that respect, and for exceptions and related matters.

Subsection (2)

44. Subsection (2) inserts new sections 10A and 10B into the 1981 Act.
Protection of wild hares etc. - inserted section 10A of the 1981 Act
45. Subsection (1) of section 10A of the 1981 Act provides for it to be an offence to kill, injure or take any wild animal listed in new Schedule 5A to that Act outside the close season for the animal. The penalties in section 21(1) of the 1981 Act apply in to any such offence. .
46. Subsection (2) of section 10A specifies close seasons for mountain hares and brown hares. The close seasons are 1 March to 31 July and 1 February to 30 September, respectively. Subsection (3) of new section 10A enables the Scottish Ministers to vary any close season by order.
47. Subsections (4) to (7) of section 10A enable the Scottish Ministers to specify by order a period of special protection of up to 14 days for any animal listed in Schedule 5A, to have effect as if the period were part of the close season for the animal. The provisions are similar to power to specify a period of special protection in respect of wild birds under section 2(6) and (7) of the 1981 Act.
48. Subsection (8) of section 10A creates a presumption in any proceedings for an offence under that section that the animal in question was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act and in new section 11E(2), as inserted by section 7 of the Act.

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

*These notes relate to the Wildlife and Natural Environment (Scotland)
Act 2011 (asp 6) which received Royal Assent on 7 April 2011*

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).

Subsection (3)

53. Subsection (3) amends section 26(2) of the 1981 Act to provide that orders setting periods of special protection for animals under new section 10A(4) will not be subject to parliamentary procedure. Section 26(2) of the 1981 Act already makes similar provision for orders setting periods of special protection for wild birds.

Subsections (4) and (5)

54. Subsection (5) inserts Schedule 5A into the 1981 Act, and subsection (4) makes a consequential change to the heading of Schedule 5 of that Act.
55. The species listed on Schedule 5A are the mountain hare and the brown hare. Section 10 of the Act amends section 22 of the 1981 Act with the effect that the Scottish Ministers may add any animal to, or remove any animal from, Schedule 5A.