



# Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

## PART 2

### WILDLIFE UNDER THE 1981 ACT

#### *Wild birds, their nests and eggs*

### **3 Protection of game birds etc. and prevention of poaching**

- (1) The 1981 Act is amended as follows.
- (2) In the italic heading before section 1 (protection of wild birds, their nests and eggs), at the end add “ and prevention of poaching ”.
- (3) In that section, for subsection (6) (“wild birds” in section 1 does not include birds shown to have been bred in captivity), substitute—
  - “(6) For the purposes of this section, the definition of “wild bird” in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless—
    - (a) it has been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme; or
    - (b) it is a mallard, grey or red-legged partridge, common pheasant or red grouse which is no longer in captivity and is not in a place where it was reared.”.
- (4) In section 2 (exceptions to section 1)—
  - (a) in the title, at the end add “ : acts by certain persons outside close season ”,
  - (b) in subsection (1), after “this section,” insert “ where subsection (1A) applies ”,
  - (c) after that subsection insert—
    - “(1A) This subsection applies where—
      - (a) the person who kills or injures had—
        - (i) a legal right to kill such a bird; or

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- (ii) permission, from a person who had a right to give permission, to kill such a bird; or
- (b) the person who takes had—
  - (i) a legal right to take such a bird; or
  - (ii) permission, from a person who had a right to give permission, to take such a bird.”,
- (d) in subsection (3), after “Christmas Day” insert “ in relation to those birds included in Part I of Schedule 2 which are also included in Part IA of that Schedule ”,
- (e) after subsection (3), insert—
 

“(3A) Subject to the provisions of this section, where subsection (3B) applies a person does not commit an offence under section 1 by reason of the taking for the purposes of breeding of—

  - (a) a partridge or pheasant included in Part I of Schedule 2; or
  - (b) an egg of such a bird.

(3B) This subsection applies where—

  - (a) the person who takes does so during the period of 28 days commencing with the first day of the close season for the bird; and
  - (b) the person who takes had—
    - (i) a legal right to take such a bird; or
    - (ii) permission, from a person who had a right to give permission, to take such a bird.

(3C) A person does not commit an offence under section 1 by reason of the taking of a red grouse if—

  - (a) the grouse is taken—
    - (i) for the purpose of preventing the spread of disease; and
    - (ii) with the intention of releasing it from captivity after no more than 12 hours; and
  - (b) the person had—
    - (i) a legal right to take such a grouse; or
    - (ii) permission, from a person who had a right to give permission, to take such a grouse.”,
- (f) in subsection (4)—
  - (i) after paragraph (b) insert—
    - “(ba) in the case of pheasant, the period in any year commencing with 2nd February and ending with 30th September;
    - (bb) in the case of partridge, the period in any year commencing with 2nd February and ending with 31st August;”,
  - (ii) after paragraph (c) insert—
    - “(ca) in the case of black grouse, the period commencing with 11th December in any year and ending with 19th August in the following year;

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- (cb) in the case of ptarmigan and red grouse, the period commencing with 11th December in any year and ending with 11th August in the following year;”
- (g) in subsection (7)—
- (i) for “a person” substitute “ such persons ”,
  - (ii) at the end add “ as he considers appropriate ”.
- (5) In section 5(5) (use of cage traps or nets for breeding purposes), for “game bird” substitute “ grouse, mallard, partridge or pheasant included in Part I of Schedule 2 ”.
- (6) In section 26 (regulations, orders, notices etc.)—
- (a) in subsection (2)—
- (i) after “than” insert “—
    - (a) an order under any of”,  - (ii) for “and” substitute “ or ”,
  - (iii) after “11(4)” insert “; and
    - (b) an order under section 22(1)(a) which removes from Part I of Schedule 2 black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge,”,
- (b) in subsection (3)—
- (i) after “No” insert “—
    - (a),  - (ii) after “11(4)” insert “; or
    - (b) order under section 22(1)(a) which removes from Part I of Schedule 2 any bird referred to in paragraph (b) of subsection (2),”.
- (7) In Schedule 2, Part I (birds which may be killed or taken outside the close season)—
- (a) before the entries relating to the bird with the common name “Mallard” insert in columns 1 and 2 the following entries—

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“Grouse, Black	Tetrao tetrix
Grouse, Red	Lagopus lagopus scoticus”,

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- (b) after the entries relating to the bird with the common name “Moorhen” insert in columns 1 and 2 the following entries—

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“Partridge, Grey	Perdix perdix
Partridge, Red-legged	Alectoris rufa
Pheasant, Common	Phasianus colchicus”,

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- (c) after the entries relating to the bird with the common name “Pochard” insert in columns 1 and 2 the following entries—

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“Ptarmigan	Lagopus mutus”,
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- (8) In Schedule 2, after Part I insert—

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## “PART IA

### EXCEPTION: BIRDS INCLUDED IN PART I WHICH MAY NOT BE KILLED OR TAKEN ON SUNDAYS OR CHRISTMAS DAY

<i>Common name</i>	<i>Scientific name</i>
Coot	<i>Fulica atra</i>
Duck, Tufted	<i>Aythya fuligula</i>
Gadwall	<i>Anas strepera</i>
Goldeneye	<i>Bucephala clangula</i>
Goose, Canada	<i>Branta canadensis</i>
Goose, Greylag	<i>Anser anser</i>
Goose, Pink-footed	<i>Anser brachyrhynchus</i>
Mallard	<i>Anas platyrhynchos</i>
Moorhen	<i>Gallinula chloropus</i>
Pintail	<i>Anas acuta</i>
Plover, Golden	<i>Pluvialis apricaria</i>
Pochard	<i>Aythya ferina</i>
Shoveler	<i>Anas clypeata</i>
Snipe, Common	<i>Gallinago gallinago</i>
Teal	<i>Anas crecca</i>
Wigeon	<i>Anas penelope</i>
Woodcock	<i>Scolopax rusticola</i> ?

#### **Commencement Information**

**II** S. 3 in force at 29.6.2011 by S.S.I. 2011/279, art. 2(1)(b)

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**Changes to legislation:**

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