

# **ANIMALS AND WILDLIFE (PENALTIES, PROTECTIONS AND POWERS) (SCOTLAND) ACT 2020**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Chapter 1 – Animal welfare, animal health and wildlife: offences and penalties*

#### **Wildlife offences: penalties**

#### *Section 7 – Wildlife and Countryside Act 1981: penalties for offences*

40. This section amends sections 15A (possession of pesticides), 18A (vicarious liability for certain offences by employee or agent), 20(2) (summary prosecutions) and 21 (penalties) of the Wildlife and Countryside Act 1981 (“the Wildlife Act”).
41. Section 15A(1) of the Wildlife Act provides that any person who is in possession of any pesticide containing one or more prescribed active ingredients is guilty of an offence. However, section 15A(2) provides that person is not guilty of an offence if they can show that they had that substance for the purposes of acting in accordance with either:
  - any regulations made under section 16(2) of the Food and Environment Protection Act 1985 (FEPA), or
  - Regulation (EU) No [528/2012](#) of the European Parliament and of the Council (Regulation 528/2012).
42. The Control of Pesticides Regulations 1986 (“COPR”) are made under section 16(2) of FEPA. COPR sets out a regime for the sale, supply, storing, use and advertising of pesticides which are approved by Ministers. [Regulation \(EU\) 528/2012](#) governs the use of and placing on the market of biocidal products. Certain biocidal products are necessary for the control of organisms that are harmful to human or animal health and for the control of organisms that cause damage to natural or manufactured materials.
43. Section 7(2) of the Act amends section 15A(2) of the Wildlife Act to include reference to [EU Regulation \(EC\) 1107/2009](#), thereby extending the defence to products covered by that regulation. [EU Regulation \(EC\) 1107/2009](#) governs the use of and placing on the market of plant protection products (“PPPs”). PPPs are used to protect plants and plant products from pests, diseases and weeds.
44. Section 18A of the Wildlife Act provides that where the employee or agent of a person with a right to take or kill a wild bird on or over land, or of a person who manages or controls such a right, is guilty of offences listed under section 18A(6) on or in relation to that land, then such a person is also guilty of an offence.

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45. Section 7(3) of the Act amends section 18A(6) of the Wildlife Act to include reference to offences under section 11(1)(a) or (aa), (2)(a) or (b)(ii) relating to the illegal use of traps and snares, thereby extending the offence under section 18A to those offences.
46. Section 20(2) of the Wildlife Act previously provided that summary proceedings for an offence under Part 1 could be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge; but no such proceedings could be brought more than 3 years after the commission of the offence or, in the case of continuous contravention, after the last date on which the offence was committed.
47. This time limit applied to all offences which were tried summarily under Part 1 of the Wildlife Act, whether the offence was capable of being tried by summary procedure only or whether the offence could be tried on indictment (but with the time limit applying only where the offence was tried summarily).
48. Section 7(4) of the Act amends section 20(2) of the Wildlife Act to provide that this time limit applies exclusively to proceedings which are triable summarily only. Therefore, there is no time limit for prosecution of offences which are triable either way under Part 1 of the Wildlife Act, being offences under:
- section 1 (protection of wild birds);
  - section 5(1)(a) to (d) (prohibition of certain methods of killing or taking wild birds) and (f) (knowingly causing or permitting an act made unlawful by section 5(1)(a) to (d));
  - section 6(1) (sale etc. of live or dead wild birds, eggs etc.) and (2A) (knowingly causing or permitting an act made unlawful by section 6(1)(a));
  - section 9(1), (4) (protection of certain wild animals) and (5A) (knowingly causing or permitting an Act made unlawful by section 9(1) or (4));
  - section 10A (protection of wild hares etc.);
  - section 11 (prohibition of certain methods of killing or taking wild animals);
  - section 14 (introduction of new species etc.);
  - section 14ZC (prohibition on keeping etc. of invasive animals or plants);
  - section 14A (prohibition on sale etc. of invasive animals or plants);
  - section 14AA (contravention of Invasive Alien Species Regulation);
  - section 14K (offences in relation to species control orders);
  - section 15A (possession of pesticides); and
  - section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by subsection (3)(d) (the offence of intentionally obstructing a wildlife inspector entering and inspecting any premises for the purpose of ascertaining whether an offence under section 14, 14ZC, 14A, 14B or 14K is being or has been committed on premises).
49. Section 7(6) of the Act amends section 21 to make provision for two different penalty regimes for summary only offences and three different penalty regimes for offences which can be tried under summary or solemn procedure. It therefore substitutes new provisions for existing subsections (1), (1A) and (1B) and inserts new subsections (1C), (4B), (4C), (4D) and (4E) into section 21 of the Wildlife Act, to set out the new maximum penalties and the offences to which they apply. The previous subsections (4), (4ZZA) and (4ZA) are repealed.

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50. New subsection (1) and (1A) of section 21 of the Wildlife Act provide that a person guilty of an offence under the following sections is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both):
- section 5(1)(e) (the offence of using any mechanically propelled vehicle in immediate pursuit of a wild bird for the purpose of killing or taking that bird);
  - section 5(1)(f) (knowingly causing or permitting an act made unlawful by section 5(1)(e));
  - section 6(2) (unregistered selling, offering or exposing for sale, or having in their possession, or transporting for sale, any dead wild bird or publishing or causing to be published any advertisement likely to be understood as conveying that they buy or sell, or intend to buy or sell, any of those things);
  - section 6(2A) (knowingly causing or permitting an act made unlawful by section 6(2)(a));
  - section 7 (registration etc. of certain captive birds) (other than section 7(1) (the offence of keeping or having possession of or under their control any bird listed in schedule 4 which has not been registered and ringed or marked in accordance with regulations) and section 7(5A) (knowingly causing or permitting an act made unlawful by section 7(1)));
  - section 9(5)(b) (the offence of publishing or causing to be published any advertisement likely to be understood as conveying that they buy or sell, or intend to buy or sell, any live or dead wild animal listed in schedule 5);
  - section 11A (snares: training, identification numbers, tags etc.);
  - section 11C (snares: authorisation from landowners etc.);
  - section 11E (snares: record keeping);
  - section 13 (protection of wild plants);
  - section 14B (notification of presence of invasive animals or plants etc.);
  - section 17 (false statements made for obtaining registration, identification number or licence etc.);
  - section 19ZC (wildlife inspectors: Scotland) (other than an offence under section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by section 19ZC(3)(d) (the offence of intentionally obstructing a wildlife inspector entering and inspecting any premises for the purpose of ascertaining whether an offence under section 14, 14ZC, 14A, 14B or 14K is being or has been committed on premises)); and
  - section 19ZD (power to take samples: Scotland).
51. The effect of this is that the offences under the above sections remain triable summarily only and subject to the same penalties as provided for in section 21(1) prior to amendment (a maximum term of imprisonment of 6 months, or a fine not exceeding level 5 on the standard scale or both).
52. New subsections (1B) and (1C) of section 21 of the Wildlife Act provide that a person guilty of an offence under the following sections is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 or both:
- section 6(3) (sale etc. of live or dead wild birds eggs etc.);

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- section 7(1) (keeping or having possession of or under their control any bird listed in schedule 4 which has not been registered and ringed or marked in accordance with regulations) and (5A) (knowingly causing or permitting an act made unlawful by section 7(1));
  - section 8 (protection of captive birds);
  - section 9(2), (4A), (5)(a) (protection of certain wild animals) and (5A) (knowingly causing or permitting an act made unlawful by section 9(2), (4A) or (5)(a));
  - section 11B (snares: duty to inspect etc.);
  - section 11G (prevention of poaching: wild hares, rabbits etc.); and
  - section 11I (possession etc., of wild hares, rabbits etc., killed or taken unlawfully).
53. The effect of this is that the offences under the above sections remain triable summarily only but are subject to the new maximum penalties.
54. New subsections (4B) and (4C) of section 21 of the Wildlife Act provide that a person guilty of an offence under sections 14ZC (prohibition on keeping etc. of invasive animals or plants), 14A (prohibition on sale etc. of invasive animals or plants), 14AA (contravention of Invasive Alien Species Regulation) and 14K (offences in relation to species control orders) is liable on summary conviction to imprisonment for a term not exceeding 12 months, or a fine not exceeding £40,000 or both, and on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
55. The effect of this is that the offences under the above sections remain triable under summary or solemn procedure and are subject to the same penalties as prior to the Act, but with the penalties being contained in new section 21(4B) rather than in two different subsections of section 21 of the Wildlife Act.
56. New subsections (4D) and (4E) of section 21 of the Wildlife Act provide that a person guilty of an offence under the following sections is liable on summary conviction to imprisonment for a term not exceeding 12 months, or a fine not exceeding £40,000 or both and, on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both:
- section 1 (protection of wild birds);
  - section 5(1)(a) to (d) (prohibition of certain methods of killing or taking wild birds) and (f) (knowingly causing or permitting an act made unlawful by section 5(1)(a) to (d));
  - section 6(1) (sale etc. of live or dead wild birds eggs etc.) and (2A) (knowingly causing or permitting an act made unlawful by section 6(1)(a));
  - section 9(1), (4) (protection of certain wild animals) and (5A) (knowingly causing or permitting an act made unlawful by section 9(1) or (4));
  - section 10A (protection of wild hares etc.);
  - section 11 (prohibition of certain methods of killing or taking wild animals);
  - section 14 (introduction of new species); and
  - section 15A (possession of pesticides).
57. The effect of this is that the offences under the above sections are now triable under summary or solemn procedure and are subject to the higher maximum penalties.
58. Section 21(5) provides that the maximum fine imposed for any offence which is triable by summary procedure only, committed in respect of more than one bird, nest, egg,

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other animal, plant or other thing, is to be determined as if the person convicted had been convicted of a separate offence in respect of each bird, nest, egg, animal, plant or thing.

59. Section 7(6)(d) of the Act amends section 21(5) so that it continues to apply to offences triable by summary procedure only, which are those now listed under section 21(1A) and (1C).
60. The effect of this is that where the offence was committed in respect of more than one bird, nest, egg, other animal, plant or other thing, the maximum fine which may be imposed under subsection (1) and (1B) on summary conviction for an offence is to be determined as if the person convicted had been convicted of a separate offence in respect of each bird, nest, egg, animal, plant or thing.