SCHEDULE 6

(introduced by section 50)

PROTECTION OF WILDLIFE

1 The 1981 Act is amended as follows.

Commencement Information

I1 Sch. 6 para. 1 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

Protection of birds: offences

2 (1) Section 1 (protection of wild birds etc.) is amended as follows.

(2) In subsection (1)—

(a) after "intentionally" insert " or recklessly ",

(b) in paragraph (b), for "or destroys" substitute " , destroys or otherwise interferes with ",

(c) after paragraph (b) insert—

"(ba) at any other time takes, damages, destroys or otherwise interferes with any nest habitually used by any wild bird included in Schedule A1;

(bb) obstructs or prevents any wild bird from using its nest;".

(3) In subsection (3)—

(a) in paragraph (a), after "taken", where second occurring, insert " at or from a place in Scotland ",

(b) the word "or" at the end of that paragraph is repealed,

(c) in paragraph (b), after "sold" insert " at a place in Scotland ",

(d) after that paragraph insert "; or

(c) that the bird, egg or other thing in his possession or control had been killed at, taken from or sold at a place outwith Scotland and—

(i) that the act of killing, taking or sale would not, if it had been committed in Scotland, have been in contravention of the relevant provisions; or

(ii) that the bird, egg or other thing had been brought from the place where it was killed, taken or sold in accordance with the relevant regulations.",

(e) the words from "and", where first occurring, to the end of the subsection are repealed.

(4) After that subsection insert—

"(3A) In subsection (3)—

"the relevant provisions" means such of the provisions of—

(a) the Protection of Birds Acts 1954 to 1967 and orders made under those Acts, and

(b) this Part and orders made under it,

as were in force at the time when the bird or egg was killed or taken or, as the case may be, the bird, egg or other thing was sold,

"the relevant regulations" means—

(a) Council Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade, and

(b) Commission Regulation 1808/2001/EC on the implementation of that Council Regulation,

as amended from time to time (or any **[**[F1]EU**]** instrument replacing either of them)."

(5) In subsection (5), after "intentionally" insert " or recklessly ".

(6) After that subsection insert—

"(5A) Subject to the provisions of this Part, any person who intentionally or recklessly disturbs any wild bird included in Schedule 1 which leks while it is doing so shall be guilty of an offence.

(5B) Subject to the provisions of this Part, any person who intentionally or recklessly harasses any wild bird included in Schedule 1A shall be guilty of an offence.

(5C) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section shall be guilty of an offence."

Textual Amendments

F1 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3)4(2)6(4)6(5))

Commencement Information

I2 Sch. 6 para. 2 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

3 In section 2 (exceptions to offences against wild birds etc.)—

(a) subsection (2) is repealed,

(b) in subsection (3), for "Subsections (1) and (2)" substitute " Subsection (1) ".

Commencement Information

I3 Sch. 6 para. 3 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

4 In section 3 (areas in which wild birds are given special protection)—

(a) in subsection (1)(a), after "intentionally" insert " or recklessly ",

(b) subsection (2) is repealed.

Commencement Information

I4 Sch. 6 para. 4 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

5 (1) Section 4 (exceptions to offences against wild birds etc.) is amended as follows.

(2) In subsection (2), in paragraph (c), for the words from "if" to the end substitute " (an unlawful act if he shows that each of the conditions specified in subsection (2A) was satisfied in relation to the carrying out of the unlawful act. "

(3) After that subsection insert—

"(2A) Those conditions are—

(a) that the unlawful act was the incidental result of a lawful operation or other activity;

(b) that the person who carried out the lawful operation or other activity—

(i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or

(ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and

(c) that the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild bird, nest or, as the case may be, egg in relation to which the unlawful act was carried out."

(4) In subsection (4), for "(3)(c)" substitute " (3) ".

(5) In subsection (5)—

(a) for "(3)(c)" substitute " (3) ",

(b) for "paragraph" substitute " subsection ".

(6) In subsection (6), for "(3)(c)" substitute " (3) ".

Commencement Information

I5 Sch. 6 para. 5 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

6 In section 5 (prohibition of certain methods of killing or taking wild birds)—

(a) in subsection (1)(a), for "calculated" substitute " likely ",

(b) paragraphs (a) and (b) of subsection (5) are repealed.

Commencement Information

I6 Sch. 6 para. 6 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

7 In section 7(3) (prohibition on possessing certain birds)—

(a) the word "or" at the end of paragraph (a) is repealed,

(b) after paragraph (b) insert "; or

(c) any offence under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (S.I. 1997/1372) relating to birds (other than an offence under Regulation 9 of those Regulations)".

Commencement Information

I7 Sch. 6 para. 7 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

Protection of animals: offences

8 (1) Section 9 (protection of certain wild animals) is amended as follows.

(2) In subsection (1), after "intentionally" insert " or recklessly ".

(3) In subsection (3)—

(a) in paragraph (a), after "taken", where second occurring, insert " at or from a place in Scotland ",

(b) the word "or" at the end of that paragraph is repealed,

(c) in paragraph (b), after "sold" insert " at a place in Scotland ",

(d) after paragraph (b) insert "; or

(c) that the animal or other thing in his possession or control had been killed at, taken from or sold at a place outwith Scotland and—

(i) that the act of killing, taking or sale would not, if it had been committed in Scotland, have been in contravention of the relevant provisions; or

(ii) that the animal or other thing had been brought from the place where it was killed, taken or sold in accordance with the relevant regulations.",

(e) the words from "and", where first occurring, to the end of the subsection are repealed.

(4) After that subsection insert—

"(3A) In subsection (3)—

"the relevant provisions" means such of the provisions of the Conservation of Wild Creatures and Wild Plants Act 1975 (c. 48) and this Part as were in force at the time when the animal was killed or taken or, as the case may be, the animal or other thing was sold, and

"the relevant regulations" means—

(a) Council Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade, and

(b) Commission Regulation 1808/2001/EC on the implementation of that Council Regulation,

as amended from time to time (or any **[**[F1]EU**]** instrument replacing either of them)."

(5) In subsection (4), after "intentionally" insert " or recklessly ".

(6) After that subsection insert—

"(4A) Subject to the provisions of this Part, any person who, intentionally or recklessly, disturbs or harasses any wild animal included in Schedule 5 as a—

(a) dolphin, whale or porpoise (cetacea); or
(b) basking shark (cetorhinus maximus),

shall be guilty of an offence."

(7) After subsection (5) insert—

"(5A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section (other than subsection (5)(b)) shall be guilty of an offence."

(8) In subsection (6), after "(5)(a)" insert " or for an offence under subsection (5A) relating to an act which is mentioned in subsection (1), (2) or (5)(a) ".

Textual Amendments

F1 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3)4(2)6(4)6(5))

Commencement Information

I8 Sch. 6 para. 8 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

9 In section 10 (exceptions to offences against wild animals)—

(a) in subsection (3), in paragraph (c), for the words from "if" to the end substitute "("an unlawful act") if he shows—

(i) that each of the conditions specified in subsection (3A) was satisfied in relation to the carrying out of the unlawful act, or

(ii) that the unlawful act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.",

(b) after that subsection insert—

"(3A) Those conditions are—

(a) that the unlawful act was the incidental result of a lawful operation or other activity;

(b) that the person who carried out the lawful operation or other activity—

(i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or

(ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and

(c) that the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal, or the damage or obstruction to the structure or place, in relation to which the unlawful act was carried out.",

(c) after subsection (6) insert—

"(6A) An authorised person shall not be entitled to rely on the defence provided by subsection (4) as respects any action taken at any time unless he notified the Scottish Ministers as soon as reasonably practicable after that time that he had taken the action."

Commencement Information

I9 Sch. 6 para. 9 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

10 (1) Section 11 (prohibition of certain methods of killing or taking wild animals) is amended as follows.

(2) In subsection (1)(a)—

(a) after "position" insert " or otherwise uses ",

(b) for the words from "which" to the end of the paragraph substitute " or a snare of any other type specified in an order made by the Scottish Ministers ".

(3) After that paragraph insert—

"(aa) sets in position or otherwise uses any other type of snare which is either of such a nature or so placed (or both) as to be calculated to cause unnecessary suffering to any animal coming into contact with it;".

(4) In subsection (1)(b), for the words from "wild" to "aforesaid," substitute " animal ".

(5) In subsection (2)(a), for "calculated" substitute " likely ".

(6) For subsection (3) substitute—

"(3) Any person who sets a snare in position or who knowingly causes or permits a snare to be so set must, while it remains in position, inspect it or cause it to be inspected at least once every day at intervals of no more than 24 hours.

(3A) Any person who, while carrying out such an inspection, finds an animal caught by the snare being inspected must, during the course of the inspection, release or remove the animal (whether live or dead).

(3B) Subject to the provisions of this Part, any person who—

(a) without reasonable excuse, contravenes subsection (3), or

(b) contravenes subsection (3A),

shall be guilty of an offence.

(3C) Subject to the provisions of this Part, any person who—

(a) is, without reasonable excuse, in possession of; or

(b) sells, or offers or exposes for sale,

a snare which is capable of operating as a self-locking snare or a snare of any other type specified in an order under subsection (1)(a) shall be guilty of an offence.

(3D) Subject to the provisions of this Part, any person who, without reasonable excuse—

(a) while on any land, has in his possession any snare without the authorisation of the owner or occupier of the land; or

(b) sets any snare in position on any land without the authorisation of the owner or occupier of the land,

shall be guilty of an offence.

(3E) Subject to the provisions of this Part, any person who uses a snare otherwise than in accordance with such requirements as may be specified in an order made by the Scottish Ministers, or who knowingly causes or permits any other person to do so, shall be guilty of an offence."

(7) After subsection (4) insert—

"(4A) The Scottish Ministers may by order specify—

(a) criteria which articles of a type referred to in subsections (1) to (3E) must meet to be treated as articles of that type for the purposes of those subsections,

(b) circumstances in which articles of that type are to be treated as having been set or used in a manner which constitutes an offence under those subsections."

(8) In subsection (5), for "(1)(b) or (c)" substitute " (1)(c) ".

Commencement Information

I10 Sch. 6 para. 10 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

11 (1) Section 13 (protection of wild plants) is amended as follows.

(2) In subsection (1)(a)—

(a) after "intentionally" insert " or recklessly ",

(b) after "destroys" insert "—

(i)",

(c) at the end insert—

"(ii) any seed or spore attached to any such wild plant; or".

(3) In subsection (1)(b), after "intentionally" insert " or recklessly ".

(4) In subsection (3), for the words from "if" to the end substitute "("an unlawful act") if he shows—

(a) that the unlawful act was the incidental result of a lawful operation or other activity;

(b) that the person who carried out the lawful operation or other activity—

(i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or

(ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and

(c) that the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent, such steps as

were reasonably practicable in the circumstances to minimise the damage to the wild plant in relation to which the unlawful act was carried out."

(5) After that subsection insert—

"(3A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section shall be guilty of an offence."

(6) In subsection (4), after "(2)(a)" insert " or for an offence under subsection (3A) relating to an act which is mentioned in subsection (2)(a) ".

Commencement Information

I11 Sch. 6 para. 11 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

Non-native species

12 In section 14 (prohibition on introducing new species)—

(a) in subsection (1)(b), for the words from "included" to "9" substitute " a hybrid of any animal of that kind ",

(b) after subsection (1) insert—

"(1A) Subject to the provisions of this Part, if any person releases or allows to escape from captivity any animal which is—

(a) included in Part I of Schedule 9; or

(b) a hybrid of any animal included in that Part,

he shall be guilty of an offence.",

(c) in subsection (2)—

(i) after "is" insert —

"(a)",

(ii) after "9" insert "; or

(b) a hybrid of any plant included in that Part".

Commencement Information

I12 Sch. 6 para. 12 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

13 After section 14 insert—

"**14A Prohibition on sale etc. of certain animals or plants**

(1) This section applies to—

(a) any animal of a type mentioned in subsection (1) or (1A) of section 14 specified in an order made by the Scottish Ministers for the purposes of this section; and

(b) any plant—

(i) which does not ordinarily grow in Great Britain in a wild state or which is a hybrid of such a plant; or

(ii) of a type mentioned in subsection (2) of section 14,

specified in such an order.

(2) Subject to the provisions of this Part, any person who—

(a) sells, offers or exposes for sale or has in the person's possession or transports for the purpose of sale any animal or plant to which this section applies; or

(b) publishes or causes to be published any advertisement likely to be understood as conveying that the person buys or sells, or intends to buy or sell, any such animal or plant,

is guilty of an offence.

(3) An order under subsection (1) may specify particular types of animals or plants—

(a) subject to such exceptions;

(b) only at such times of the year;

(c) only in relation to such areas,

as the order may specify.

14B Guidance: non-native species

(1) The Scottish Ministers may issue guidance (or approve guidance issued by others) for the purpose of providing persons with recommendations, advice and information regarding—

(a) any animal of a type mentioned in subsection (1) or (1A) of section 14,

(b) any plant of a type mentioned in subsection (2) of that section or specified in an order under section 14A(1)(b)(i),

and may issue revisions of any guidance issued by them (or approve revisions of guidance issued by others).

(2) A person who fails to comply with any guidance issued or approved under subsection (1) is not by reason only of that failure liable in any criminal or civil proceedings.

(3) But any such guidance is admissible in evidence in such proceedings and a court may take account of any failure to comply with it in determining any questions in the proceedings."

Commencement Information

I13 Sch. 6 para. 13 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

Miscellaneous

14 After section 15 insert—

"**15A Possession of pesticides**

(1) Any person who is in possession of any pesticide containing one or more prescribed active ingredient shall be guilty of an offence.

(2) A person shall not be guilty of an offence under subsection (1) if the person shows that the possession of the pesticide was for the purposes of doing anything in accordance with—

(a) any regulations made under section 16(2) of the Food and Environment Protection Act 1985 (c. 48), or

(b) the Biocidal Products Regulations 2001 (S.I. 2001/880) or any regulations replacing those regulations.

(3) In this section—

"pesticide" has the meaning given in the Food and Environment Protection Act 1985 (c. 48), and

"prescribed active ingredient" means an ingredient of a pesticide which fits it for use as such and which is of a type prescribed by order made by the Scottish Ministers."

Commencement Information

I14 Sch. 6 para. 14 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

15 In section 16 (power to grant licences)—

(a) in subsection (2)(b), the words from "or," to "egg", where second occurring, are repealed,

(b) in subsection (3)—

(i) for "and (4)" substitute " , (4) and (4A) ",

(ii) for "and (2)" substitute " , (2) and (3C)(a) ",

(iii) in paragraph (a), after "scientific" insert " , research ",

(iv) in paragraph (c), after "conserving" insert " wild birds, ",

(v) after that paragraph insert—

"(ca) for the purpose of conserving any area of natural habitat;",

(c) in subsection (4), for "section 14" substitute " sections 14 and 14A ",

(d) after subsection (4) insert—

"(4A) The appropriate authority shall not grant a licence under subsection (4) permitting anything to be done in contravention of section 6(1) or (2) unless it is satisfied that there is no other satisfactory solution."

Commencement Information

I15 Sch. 6 para. 15 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

16 In section 19 (enforcement)—

(a) in subsection (1)(b)—

(i) at beginning insert " search for, ",

(ii) for the words "have in his possession" substitute " may have used, or may have or have had in his possession, ",

(iii) after "found" insert " in or ",

(b) in subsection (2)—

(i) after "committing" insert " or has committed ",

(ii) for "dwelling-house" substitute " dwelling or lockfast premises ",

(c) in subsection (3)—

(i) for "information" substitute " evidence ",

(ii) for the words from "(with" to "premises" in the second place where it occurs substitute " to enter those premises, if necessary using reasonable force, and search them ",

(d) after subsection (3) insert—

"(4) A warrant under subsection (3) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier's behalf, produce evidence of the constable's authority.

(6) A constable who enters any land in the exercise of a power conferred by this section—

(a) may—

(i) be accompanied by any other persons, and

(ii) take any machinery, other equipment or materials on to the land,

for the purpose of assisting the constable in the exercise of that power,

(b) may take samples of any articles or substances found there and remove the samples from the land.

(7) A power specified in subsection (6)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.

(8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) or by a warrant under subsection (3), being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it."

Commencement Information

I16 Sch. 6 para. 16 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

17 After section 19ZB (inserted, as respects England and Wales, by Schedule 12 to the Countryside and Rights of Way Act 2000 (c. 37)) insert—

"**19ZC Wildlife inspectors: Scotland**

(1) The Scottish Ministers may authorise any person to carry out the functions conferred by this section and section 19ZD(3), (4) and (8) (and any person so authorised is to be known as a "wildlife inspector").

(2) An authorisation under subsection (1)—

(a) shall be in writing, and

(b) is subject to any conditions or limitations specified in it.

(3) A wildlife inspector may, at any reasonable time and (if required to do so) upon producing evidence of authorisation, enter and inspect—

(a) any premises for the purpose of ascertaining whether an offence under section 6, 9(5) or 13(2) is being, or has been, committed on those premises;

(b) any premises where the inspector has reasonable cause to believe that any birds included in Schedule 4 are kept, for the purpose of ascertaining whether an offence under section 7 is being, or has been, committed on those premises;

(c) any premises where the inspector has reasonable cause to believe that any birds are kept, for the purpose of ascertaining whether an offence under section 8(1) is being, or has been, committed on those premises;

(d) any premises for the purpose of ascertaining whether an offence under section 14 or 14A is being, or has been, committed on those premises;

(e) any premises for the purpose of verifying any statement or representation which has been made by an occupier, or any document or information which has been furnished by the occupier, and which the occupier made or furnished—

(i) for the purposes of obtaining (whether for the occupier or another person) a relevant registration or licence; or

(ii) in connection with a relevant registration or licence held by the occupier.

(4) In subsection (3)—

(a) paragraphs (a) to (c) do not confer power to enter a dwelling except for purposes connected with—

(i) a relevant registration or licence held by an occupier of the dwelling; or

(ii) an application by an occupier of the dwelling for a relevant registration or licence,

(b) paragraph (d) does not confer power to enter a dwelling.

(5) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 8(1), 9(5), 13(2), 14 or 14A is being, or has been, committed in respect of any specimen, require any person who has possession or control of the specimen to make it available for examination by the inspector.

(6) Any person who has possession or control of any live bird or other animal shall give any wildlife inspector acting in the exercise of powers conferred by this section such assistance as the inspector may reasonably require for the purpose of examining the bird or other animal.

(7) Any person who—

(a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by subsection (3) or (5); or

(b) fails without reasonable excuse to give any assistance reasonably required under subsection (6),

shall be guilty of an offence.

(8) Any person who, with intent to deceive, falsely pretends to be a wildlife inspector shall be guilty of an offence.

(9) In this section—

"relevant registration or licence" means—

(a) a registration in accordance with regulations under section 7(1); or

(b) a licence under section 16 authorising anything which would otherwise be an offence under section 6, 7, 8(1), 9(5), 13(2), 14 or 14A;

"specimen" means any bird, other animal or plant or any part of, or anything derived from, a bird, other animal or plant.

19ZD Power to take samples: Scotland

(1) A constable who suspects with reasonable cause that a specimen found by the constable in the exercise of powers conferred by section 19 is one in respect of which an offence under this Part is being or has been committed may require the taking from it of a sample of blood or tissue in order to determine its origin, identity or ancestry.

(2) A constable who suspects with reasonable cause that an offence under this Part is being or has been committed in respect of any specimen ("the relevant specimen") may require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person's possession or control which is alleged to be, or which the constable suspects with reasonable cause to be, a specimen a sample from which will tend to establish the origin, identity or ancestry of the relevant specimen.

(3) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2), 14 or 14A is being or has been committed, require the taking of a sample of blood or tissue from a specimen found by the inspector in the exercise of powers conferred by section 19ZC(3)(a) to (d) in order to determine its origin, identity or ancestry.

(4) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2), 14 or 14A is being or has been committed in respect of any specimen ("the relevant specimen"), require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person's possession or control which is alleged to be, or which the inspector suspects with reasonable cause to be, a specimen a sample from which will tend to establish the origin, identity or ancestry of the relevant specimen.

(5) No sample from a live bird, other animal or plant shall be taken pursuant to a requirement under this section unless the person taking it is satisfied on reasonable grounds that taking the sample will not cause lasting harm to the specimen.

(6) No sample from a live bird or other animal shall be taken pursuant to such a requirement except by a veterinary surgeon.

(7) Where a sample from a live bird or other animal is to be taken pursuant to such a requirement, any person who has possession or control of the specimen shall give the person taking the sample such assistance as that person may reasonably require for that purpose.

(8) A constable entering premises under section 19(2), and any wildlife inspector entering premises under section 19ZC(3), may take with him a veterinary surgeon if the constable or, as the case may be, inspector has reasonable grounds for believing that such a person will be required for the exercise on the premises of powers under subsection (1) or (2) or, as the case may be, (3) or (4).

(9) Any person who—

(a) intentionally obstructs a wildlife inspector acting in the exercise of the power conferred by subsection (3),

(b) fails without reasonable excuse to make available any specimen in accordance with a requirement under subsection (2) or (4), or

(c) fails without reasonable excuse to give any assistance reasonably required under subsection (7),

shall be guilty of an offence.

(10) In this section—

(a) "specimen" has the same meaning as in section 19ZC;

(b) in relation to a specimen which is a part of, or is derived from, a bird, other animal or plant, references to determining its origin, identity or ancestry are to determining the origin, identity or ancestry of the bird, other animal or plant."

Commencement Information

I17 Sch. 6 para. 17 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

18 In section 20(2) (summary prosecutions)—

(a) for "two" substitute " three ", and

(b) at the end insert " or, in the case of a continuous contravention, after the last date on which the offence was committed ".

Commencement Information

I18 Sch. 6 para. 18 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

19 In section 21 (penalties etc.)—

(a) in subsection (1), for "or section 17" substitute " , 15A, 17, 19ZC (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)) or 19ZD ",

(b) in subsection (4)—

(i) after "14" insert " or 14A ",

(ii) in paragraph (a), for "the statutory maximum" substitute " £40,000 ",

(c) after subsection (4) insert—

"(4A) A person guilty of an offence under section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by subsection (3)(d) of that section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.",

(d) in subsection (6)(b), after "14" insert " or 14A ".

Commencement Information

I19 Sch. 6 para. 19 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

20 In section 22 (power to vary Schedules)—

(a) in subsection (1)—

(i) after "year" insert "—

(a)",

(ii) for "1" substitute " A1 ",

(iii) at the end insert—

"(b) add any animal to, or remove any animal from, Schedule 5 or 6 or Part I of Schedule 9;

(c) add any plant to, or remove any plant from, Schedule 8 or Part II of Schedule 9.",

(b) after subsection (2) insert—

"(2A) Before making an order under subsection (1) the Scottish Ministers shall consult Scottish Natural Heritage.",

(c) subsections (4) and (5) are repealed.

Commencement Information

I20 Sch. 6 para. 20 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

21 In section 26 (procedure for orders)—

(a) in each of subsections (2) and (3), for "11" substitute " 11(4) ",

(b) in subsection (4)(b), for "22(3)" substitute " 22 ".

Commencement Information

I21 Sch. 6 para. 21 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

22 After section 26 insert—

"**26A Enforcement of wildlife legislation**

Regulations under section 2(2) of the European Communities Act 1972 (c. 68) for the purpose of implementing Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as amended

by the Act of Accession to the European Union of Austria, Finland and Sweden and by Council Directive 97/62/EC may, despite paragraph 1(1)(d) of Schedule 2 to that Act, create offences punishable on summary conviction with imprisonment for a term not exceeding six months."

Commencement Information

I22 Sch. 6 para. 22 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

23 (1) Section 27 (interpretation of Part I) is amended as follows.

(2) In subsection (1)—

(a) in the definition of "poultry", for "domestic" substitute " the domestic forms of the following, that is to say ",

(b) in the definition of "wild bird"—

(i) for "kind" substitute " species ",

(ii) for "Great Britain" substitute " any member State or the European territory of any member State ",

(c) in the definition of "wild plant", after "plant" insert " (including fungi) ".

(3) After subsection (2) insert—

"(2A) An animal shall not be treated as bred in captivity for the purposes of this Part unless its parents were lawfully held in captivity—

(a) where the animal is of a viviparous species, when it was born,

(b) where the animal is of an oviparous species, when the egg was laid."

(4) After subsection (3) insert—

"(3ZA) Any reference in this Part to a plant which is growing—

(a) includes a reference to a bulb, corm or rhizome;

(b) does not include a reference to a seed or spore."

Commencement Information

I23 Sch. 6 para. 23 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

24 Before Schedule 1 insert—

"SCHEDULE A1

PROTECTED NESTS AND NEST SITES: BIRDS

Common name	Scientific name
Eagle, White-tailed	Haliaetus albicilla".

Commencement Information

I24 Sch. 6 para. 24 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

25 After Schedule 1 insert—

"SCHEDULE 1A
BIRDS WHICH ARE PROTECTED FROM HARASSMENT

Common name	Scientific name
Eagle, White-tailed	Haliaetus albicilla".

Commencement Information
I25 Sch. 6 para. 25 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

26 (1) The Protection of Badgers Act 1992 is amended as follows.

(2) In section 1 (taking, injuring or killing badgers)—
(a) in subsection (1), the words ", or attempts to kill, injure or take," are repealed,
(b) subsection (2) is repealed.

(3) In section 3 (interfering with badger setts)—
(a) the existing provision becomes subsection (1),
(b) after that provision insert—

"(2) A person is guilty of an offence if, except as permitted by or under this Act, he knowingly causes or permits to be done an act which is made unlawful by subsection (1) above."

(4) In section 6 (general exceptions from offences)—
(a) in paragraph (a)—
(i) after "his" insert " unlawful ",
(ii) after "it" insert " and releasing it when no longer disabled ",
(b) in paragraph (b), for the words from "appears" to "mercy" substitute " has been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of it recovering ".

(5) In section 8 (exceptions from offence of interfering with badger setts)—
(a) in subsection (1), for "3" substitute " 3(1) or (2) ",
(b) in subsection (3)—
(i) for "3(a)" substitute " 3(1)(a) ",
(ii) after "above" insert " or an offence under section 3(2) above relating to an offence under section 3(1)(a), (c) or (e) above ".

(6) In section 9 (exceptions from offence of possessing or controlling live badger), in paragraph (b)—
(a) after "his", where first occurring, insert " unlawful ",
(b) after "it", where second occurring, insert " and releasing it when no longer disabled ".

(7) For section 11 substitute—

"**11 Powers of constables**

(1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, without warrant—

(a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;

(b) search for, search or examine any thing which that person may then be using or may have used, or may have or have had in the person's possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing;

(c) arrest that person;

(d) seize and detain for the purposes of proceedings under this Act any thing which may be evidence of the commission of the offence or may be liable to be forfeited under section 12(4) below.

(2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, for the purpose of exercising the powers conferred by subsection (1) above, enter any land other than a dwelling or lockfast premises.

(3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under this Act has been committed and that evidence of the offence may be found on any premises, the sheriff or justice may grant a warrant authorising a constable to enter those premises, if necessary using reasonable force, and search them for the purposes of obtaining that evidence.

(4) A warrant under subsection (3) above continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier's behalf, produce evidence of the constable's authority.

(6) A constable who enters any land in the exercise of a power conferred by this section—

(a) may—

(i) be accompanied by any other persons; and

(ii) take any machinery, other equipment or materials on to the land,

for the purpose of assisting the constable in the exercise of that power;

(b) may take samples of any articles or substances found there and remove the samples from the land.

(7) A power specified in subsection (6)(a) or (b) above which is exercisable under a warrant is subject to the terms of the warrant.

(8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) above or by a warrant under subsection (3) above, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it."

(8) After section 11 insert—

"**11A Attempts**

(1) A person who attempts to commit an offence under this Act is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) A person who is in possession, for the purposes of committing an offence under this Act, of anything capable of being used for committing the offence is guilty of the offence and is liable to be proceeded against and punished accordingly.

(3) If, in any proceedings for an offence under section 1(1) above consisting of an attempt to kill, injure or take a badger, there is evidence from which it could reasonably be concluded that at the material time the accused was attempting to kill, injure or take a badger, he shall be presumed to have been attempting to kill, injure or take a badger unless the contrary is shown."

(9) In section 12 (penalties etc.)—

(a) in subsection (1)—

(i) for "2 or 3 above " substitute " 2(1)(d), 3(1)(a) to (c) or (e) above or under section 3(2) above (in relation to an act made unlawful by section 3(1)(a) to (c) or (e) above) ",

(ii) the word "4," is repealed,

(b) after subsection (1) insert—

"(1A) A person guilty of an offence under section 2(1)(a) to (c), 3(1)(d) or 4 above or under section 3(2) above (in relation to an act made unlawful by section 3(1)(d) above) is liable—

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both,

(b) on conviction on indictment to imprisonment for a term not exceeding three years or to a fine or both.",

(c) in subsection (2), after "(1)" insert " or (1A)(a) ".

(10) After section 12 insert—

"**12A Time limit for bringing summary proceedings**

(1) Summary proceedings for an offence under section 1(1), 2, 3, 5 or 10(8) of this Act may, subject to subsection (2) below, 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.

(2) No such proceedings may be brought more than 3 years—

(a) after the commission of the offence, or

(b) in the case of a continuous contravention, after the last date on which the offence was committed.

(3) A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

12B Offences by bodies corporate etc.

(1) Where an offence under this Act committed—

(a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is a director, manager or secretary of the body corporate, or

(ii) purports to act in any such capacity,

(b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is a partner, or

(ii) purports to act in that capacity,

(c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is concerned in the management or control of the association, or

(ii) purports to act in the capacity of a person so concerned,

the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(3) Any penalty imposed on a body corporate, Scottish partnership or, as the case may be, unincorporated association on conviction of an offence under this Act is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995 (c. 46)."

(11) In section 13 (power of court where dog used etc.), in subsection (1), for "3" substitute " 3(1) or (2) ".

Commencement Information

I26 Sch. 6 para. 26 in force at 1.10.2004 by S.S.I. 2004/407, **art. 2(b)**

Changes to legislation:
There are currently no known outstanding effects for the Nature Conservation (Scotland) Act 2004, SCHEDULE 6.