

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Part 2 – Wildlife under the 1981 Act

Section 3 – Protection of game birds etc. and prevention of poaching

23. **Section 3** of the Act amends sections 1, 2, 5 and 26 of, and Schedule 2 to, the 1981 Act.
24. Section 1 of the 1981 Act creates offences of killing, taking and injuring any wild bird. Section 2 of that Act creates exceptions to those offences, which allow certain species (those listed in Schedule 2) to be taken and killed outside close seasons. Section 5 of that Act prohibits certain methods of killing or taking wild birds. Section 26 of that Act provides for the making of regulations, orders and notices.

Subsections (2) and (3)

25. Subsections (2) and (3) amend section 1 of the 1981 Act, with the effect that the offences under that section will apply to any bird born in captivity and released for conservation purposes, and to any partridge, pheasant, mallard or red grouse born in captivity and fully released for any purpose (typically, for sporting purposes).

Subsections (4), (7) and (8)

26. Subsections (4), (7) and (8) amend section 2 of, and Schedule 2 to the 1981 Act, with the general effect that it is lawful to kill or take game birds outside the close seasons for such birds, provided that the person who kills or takes any bird covered by section 2 of that Act has a legal right to do so (or permission from a person with such a right).
27. Subsection (4), paragraphs (b) and (c), qualifies the exception in section 2(1) of the 1981 Act under which it is not an offence under section 1 of that Act for any person to kill or take a bird included in Part 1 of Schedule 2 to that Act outside the close season for that bird, with the effect that the exception only applies where the person who kills or takes the bird has either a legal right to do so or permission from a person with such a right. The Act does not however confer or alter any legal right to kill or take a wild bird, or to give permission to do so. In broad terms, a legal right to kill or take a wild bird on or over land arises from ownership or lawful occupation of the land or of an interest in the land.
28. Subsection (4)(d) amends the qualification in section 2(3) of the 1981 Act which provides that the exception in section 2(1) of that Act (as discussed above) does not apply in Scotland on Sundays or on Christmas Day, so that the qualification only applies to birds listed in both Parts 1 and 1A of Schedule 2 to that Act. Subsection (8) inserts Part 1A into the 1981 Act. The effect is that it is not an offence to kill or take a grouse, partridge, common pheasant or ptarmigan on a Sunday or on Christmas Day.

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

29. Subsection (4), paragraph (e) inserts new subsections (3A) to (3C) into section 2 of the 1981 Act as follows:
- subsections (3A) and (3B) have the effect that it is not an offence for person with a legal right or permission to do so (as discussed above) to take for the purposes of breeding grey or red-legged partridge or common pheasant, or the egg of such a bird, during a period of 28 days after the start of the close season for those birds (a process sometimes referred to as “catching up”), and
 - subsection (3C) has the effect that it is not an offence for a person with such a right or permission to take a red grouse for the purpose of preventing the spread of disease where it is intended to release the bird after no more than 12 hours.
30. Subsection (4), paragraph (f), amends section 2(4) of the 1981 Act to create close seasons for pheasant, grey and red-legged partridge, black grouse, red grouse and ptarmigan. The provision should be read with section 25 and Part 2 of the schedule, which repeals the close seasons set for those species under the [Game \(Scotland\) Act 1772 \(c.54\)](#).
31. Subsection (4), paragraph (g), amends section 2(7) of the 1981 Act with the effect that the Scottish Ministers must consult such persons interested in the shooting of birds proposed to be protected by a special protection order under section 2(6) of that Act as they consider appropriate.
32. Subsection (7) amends Part 1 of Schedule 2 to the 1981 Act to add game bird species (black grouse, red grouse, grey partridge, red-legged partridge, common pheasant, and ptarmigan) to the list of birds which may be killed or taken outside the close season for those birds.

Subsection (5)

33. Subsection (5) amends section 5(5) of the 1981 Act as needed as a consequence of the repeal of the definition of “game bird” in that Act, with the effect that it is lawful to use a cage trap or net to catch for the purpose of breeding any grouse, mallard, partridge or pheasant included in Part I of Schedule 2 to that Act.

Subsection (6)

34. Subsection (6) amends section 26 of the 1981 Act, with the effect that an order under section 22(1)(a) of that Act which removes black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge from Part I of Schedule 2 to that Act (so that is an offence to kill or take such a bird outside the close season) is subject to affirmative procedure.