

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Part 2 – Wildlife under the 1981 Act

Section 7 – Prevention of poaching: wild hares, rabbits etc.

56. **Section 7** of the Act inserts new sections 11G and 11H and Schedule 6A into the 1981 Act (sections 11A to 11DA being inserted into the 1981 Act by section 13 of the Act, which relates to snaring). These provisions provide in particular for it to be an offences to kill, injure or take hares and rabbits without a legal right to do so (or permission from a person with such a right), a type of offence more commonly described as poaching.
57. **Section 7** of the Act should be read with section 25 and Part 2 of the schedule, which repeals the older legislation which creates poaching offences in relation to hares and rabbits (which are referred to in that context as “ground game”).

Subsection (3)

58. Subsection (3) inserts new sections 11G and 11H into the 1981 Act.
Prevention of poaching: wild hares etc. - inserted section 11G of the 1981 Act
59. Subsection (1) of section 11G creates an offence of intentionally or recklessly killing injuring or taking a wild animal listed in Schedule 6A of the Act. Section 11E(2) creates a presumption that the animal in question in relation to an offence under section 11E(1) was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act, and section 10A(8), as inserted by section 6 of the Act.
Exceptions to s.11G - inserted section 11H of the 1981 Act
60. Subsection (1) of section 11H provides that it is not an offence to take or kill an animal where a person has a legal right to do so, or permission from the person with such a right. . The Act does however not confer or alter any legal right to kill or take an animal, or to give permission to do so. In broad terms, however, 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.
61. Subsection (2) of section 11H provides a defence to the offence of killing an animal listed in Schedule 6A 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.
62. Subsection (3) of section 11H provides that nothing in section 11G 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 (4)

63. Subsection (4) inserts Schedule 6A into the 1981 Act. The species listed on Schedule 6A are the mountain hare, brown hare and rabbit. 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 6A.