



# Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

## PART 2

### WILDLIFE UNDER THE 1981 ACT

#### *Liability in relation to certain offences by others*

#### **24 Liability in relation to certain offences by others**

After section 18 of the 1981 Act insert—

##### **“18A Vicarious liability for certain offences by employee or agent**

- (1) This subsection applies where, on or in relation to any land, a person (A) commits a relevant offence while acting as the employee or agent of a person (B) who—
  - (a) has a legal right to kill or take a wild bird on or over that land; or
  - (b) manages or controls the exercise of any such right.
- (2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In any proceedings under subsection (2), it is a defence for B to show—
  - (a) that B did not know that the offence was being committed by A; and
  - (b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.
- (5) For the purposes of subsection (1)(b), management or control of the exercise of a right to kill or take any wild bird on or over land includes in particular management or control of any of the following—

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- (a) the operation or activity of killing or taking any such birds on or over that land;
  - (b) the habitat of any such birds on that land;
  - (c) the presence on or over that land of predators of any such birds;
  - (d) the release of birds from captivity for the purpose of their being killed or taken on or over that land.
- (6) In this section and section 18B, “a relevant offence” is—
- (a) an offence under—
    - (i) section 1(1), (5) or (5B);
    - (ii) section 5(1)(a) or (b); or
    - (iii) section 15A(1); and
  - (b) an offence under section 18 committed in relation to any of the offences mentioned in paragraph (a).

### **18B Liability where securing services through another**

- (1) This subsection applies where, on or in relation to any land—
- (a) a person (A) commits a relevant offence;
  - (b) at the time the offence is committed, A is providing relevant services for a person (B); and
  - (c) B—
    - (i) has a legal right to kill or take a wild bird on or over that land;  
or
    - (ii) manages or controls the exercise of any such right.
- (2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In any proceedings under subsection (2), it is a defence for B to show—
- (a) that B did not know that the offence was being committed by A; and
  - (b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.
- (5) For the purposes of subsection (1)(b), A is providing “relevant services” for B—
- (a) if A manages or controls any of the following—
    - (i) the operation or activity of killing or taking any wild birds on or over that land;
    - (ii) the habitat of any such birds on that land;
    - (iii) the presence on or over that land of predators of any such birds;
    - (iv) the release of birds from captivity for the purpose of their being killed or taken on or over that land; and
  - (b) whether A is providing the services—
    - (i) by arrangement between A and B; or

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- (ii) by arrangement with or as employee or agent of any other person (C) who is providing or securing the provision of relevant services for B.
- (6) For the purposes of subsection (5)(b)(ii), C is providing or securing the provision of relevant services for B if C manages or controls any of the things mentioned in sub-paragraphs (i) to (iv) of subsection (5)(a).”.