



Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

PART 4

OTHER WILDLIFE ETC.

Protection of badgers

33 Protection of badgers

- (1) The 1992 Act is amended as follows.
- (2) In section 1 (taking, killing or injuring badgers) after subsection (5) add—
 - “(6) 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) or (3) above.”.
- (3) In section 2 (cruelty) after subsection (2) add—
 - “(3) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.
- (4) In section 4 (selling and possession of live badgers)—
 - (a) the existing text becomes subsection (1),
 - (b) after that subsection add—
 - “(2) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.
- (5) In section 5 (marking and ringing)—
 - (a) the existing text becomes subsection (1),
 - (b) after that subsection add—

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

(6) In section 10 (licences)—

- (a) in subsection (1) for “conservation body” substitute “authority”,
- (b) in subsection (2)—
 - (i) the words from the beginning to the second “licence” are repealed,
 - (ii) paragraphs (a) to (d) become paragraphs (g) to (j) of subsection (1),
- (c) in subsection (3)—
 - (i) the words from the beginning to the second “licence” are repealed,
 - (ii) the remaining words becomes paragraph (k) of subsection (1),
- (d) for subsection (4) substitute—

“(4) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 10A below.”,

- (e) subsection (5) is repealed,
- (f) for subsection (6) substitute—

“(6) The Scottish Ministers must consult Scottish Natural Heritage before granting a licence under subsection (1) above.”,

- (g) subsection (7) is repealed,
- (h) in subsection (8), after the word “be” insert “modified or”,
- (i) in subsection (10), for “subsection (2)(a)” substitute “subsection (1)(g)”.

(7) After that section insert—

“10A Delegation of licence-granting power: Scotland

- (1) The Scottish Ministers may delegate their functions in relation to licences under section 10 above to—
 - (a) Scottish Natural Heritage; or
 - (b) a local authority (but only in relation to the purpose mentioned in section 10(1)(d)).
- (2) A delegation may be, to any degree, general or specific and may in particular relate to—
 - (a) a specific badger or badger sett;
 - (b) a particular licence or type of licence;
 - (c) a particular area.
- (3) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.
- (4) A delegation to—
 - (a) Scottish Natural Heritage under subsection (1)(a) above is to be made by written direction;
 - (b) a local authority under subsection (1)(b) above is to be made by order made by statutory instrument.

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- (5) A local authority which is delegated a function under subsection (1)(b) above must, before granting or modifying a licence, consult Scottish Natural Heritage.
 - (6) The Scottish Ministers may modify or revoke a direction under subsection (4) (a) above.
 - (7) Where a direction or order under subsection (4) above is revoked, any existing licence granted under the direction or order continues to have effect (unless the revoking direction or order provides otherwise).
 - (8) A statutory instrument containing an order under subsection (4)(b) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.
 - (9) Before making an order under subsection (4)(b) above, the Scottish Ministers must consult—
 - (a) the local authority to which functions are to be delegated under the order;
 - (b) Scottish Natural Heritage; and
 - (c) any other persons the Scottish Ministers consider are affected by the making of the order.
 - (10) The Scottish Ministers must give consideration to any proposals for the making by them of an order under subsection (4)(b) above with respect to any area which may be submitted to them by a local authority whose area includes that area.”.
- (8) In section 11A (attempts), in subsection (3)—
- (a) after “above” insert “or section 1(6) above”,
 - (b) after “consisting of” insert “or involving”,
 - (c) for “the accused” substitute “a person”.
- (9) In section 12 (penalties and forfeiture)—
- (a) in subsection (1)—
 - (i) for the words from the first “section” to the third “above” substitute “a provision mentioned in subsection (1ZA) below”,
 - (ii) after “section 5” insert “(1) or (2)”,
 - (b) after that subsection insert—

“(1ZA) The provisions referred to in subsection (1) above are—

 - (a) section 2(1)(d) above or section 2(3) above (in relation to an act made unlawful by section 2(1)(d) above); and
 - (b) section 3(1)(a) to (c) or (e) above or section 3(2) (in relation to an act made unlawful under section 3(1)(a) to (c) or (e) above).”
 - (c) in subsection (1A)—
 - (i) for the words from the first “section” to the third “above” substitute “a provision mentioned in subsection (1B) below”,
 - (ii) in paragraph (a)—
 - (A) for “six” substitute “12”,
 - (B) for “level 5 on the standard scale” substitute “the statutory maximum”,

(d) after that subsection insert—

“(1B) The provisions referred in subsection (1A) above are—

- (a) section 1(1), (3) and (6);
- (b) section 2(1)(a) to (c) above and section 2(3) above (in relation to an act made unlawful by section 2(1)(a) to (c) above);
- (c) section 3(1)(d) above or section 3(2) above (in relation to an act made unlawful by section 3(1)(d) above); and
- (d) section 4(1) and (2) above.”.

(10) In section 12A (time limit for bringing summary proceedings), in subsection (1), for “section 1(1), 2, 3, 5” substitute “any of sections 1 to 5”.

(11) In section 13 (powers of court where dog used or present at commission of offence) after “1(1)” insert “or (6) (in relation to an act made unlawful by section 1(1))”.

Muirburn

34 Muirburn

(1) The 1946 Act is amended as follows.

(2) For section 23 (prohibition of muirburn at certain times) substitute—

“23 Muirburn season

(1) A person may make muirburn on land only during the muirburn season.

(2) The muirburn season consists of—

- (a) the standard muirburn season; and
- (b) the extended muirburn season.

(3) The standard muirburn season is the period of time from 1 October in any year to 15 April in the following year.

(4) The extended muirburn season is the period of time from 16 April to 30 April in any year.

(5) A person may make muirburn in the extended muirburn season only if the person is—

- (a) the proprietor of the land; or
- (b) authorised in writing by, or on behalf of, the proprietor of the land.”.

(3) In section 23A (power to vary permitted times for making muirburn)—

(a) in subsection (1), for the words from “subsection (1)” to the end substitute “subsection (3) or (4) of that section such other dates as they consider appropriate so as to extend or reduce the standard muirburn season or extended muirburn season.”,

(b) after that subsection insert—

“(1A) An order under subsection (1) may make different provision for different purposes and, in particular, for—

- (a) different land (for example, for land at different altitudes);

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- (b) standard muirburn seasons or extended muirburn seasons in different years.”,
 - (c) in subsection (2)—
 - (i) the words “in relation to climate change” become paragraph (a),
 - (ii) after that paragraph insert—
 - “(b) for the purposes of conserving, restoring, enhancing or managing the natural environment; or
 - (c) for the purposes of public safety.”,
 - (d) in subsection (3) from the word “immediately” to the end substitute “on the coming into force of section 34 of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).”.
- (4) After that section insert—

“23B Extension of muirburn season under section 23A(1): further regulation

- (1) Where the standard muirburn season or the extended muirburn season is extended for any land by an order under section 23A(1), the Scottish Ministers may by order make provision regulating the making of muirburn during the additional period.
- (2) Any provision so made applies in addition to the regulation by the provisions of this Act of the making of muirburn during the standard muirburn season or the extended muirburn season.
- (3) An order under subsection (1) may make provision—
 - (a) as to the giving of notice;
 - (b) as to the making, to the Scottish Ministers or a specified person, of representations or objections;
 - (c) as to the consideration by the Ministers or a specified person of any such representations or objections;
 - (d) requiring the approval of the Ministers or a specified person for the making of muirburn;
 - (e) as to such approval being able to be subject to conditions;
 - (f) as to the making of muirburn being subject to conditions specified in the order;
 - (g) creating offences;
 - (h) providing that any offence created is triable only summarily;
 - (i) providing for any offence created to be punishable by a fine not exceeding level 3 on the standard scale;
 - (j) as to such other regulation of the making of muirburn as the Scottish Ministers consider appropriate.
- (4) Conditions specified in pursuance of subsection (3)(f) may refer to matters specified elsewhere.
- (5) In—
 - (a) subsection (1), “the additional period means the period for which the standard muirburn season or, as the case may be, the extended

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muirburn season is extended for the time being for any land by an order under section 23A(1);

- (b) subsection (3), “specified person” means a person specified in the order.

- (6) The power conferred by subsection (1) is exercisable by statutory instrument.
- (7) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

23C Muirburn licences

- (1) The Scottish Ministers may grant a licence to a person to make muirburn (a “muirburn licence”) during any period, other than the muirburn season, specified in the licence.
- (2) A muirburn licence may, in particular, make provision for—
- (a) the land on which the muirburn may be made; and
 - (b) the persons or types of persons who may make the muirburn.
- (3) A muirburn licence may—
- (a) relate to only part of the land to which the application relates;
 - (b) be subject to any specified conditions (including conditions about the giving of notice).
- (4) A muirburn licence may be granted only for the purposes of—
- (a) conserving, restoring, enhancing or managing the natural environment;
 - (b) research; or
 - (c) public safety.
- (5) The Scottish Ministers may modify or revoke a muirburn licence.
- (6) The Scottish Ministers may delegate their power to grant, modify and revoke muirburn licences to Scottish Natural Heritage.
- (7) A delegation—
- (a) must be made by written direction; and
 - (b) may be, to any degree, general or specific and may in particular relate to—
 - (i) a particular licence or type of licence;
 - (ii) a particular area.
- (8) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type which were granted before the delegation.
- (9) The Scottish Ministers may modify or revoke a direction under subsection (7).
- (10) Where a direction is revoked, any existing licence granted under the direction continues to have effect (unless the revoking direction provides otherwise).
- (11) The Scottish Ministers may, by regulations, make further provision for, or in connection with, muirburn licences.

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- (12) The power conferred by subsection (11) must be exercised by statutory instrument.
- (13) A statutory instrument containing regulations under subsection (11) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.
- (5) In section 24 (right of tenant to make muirburn notwithstanding terms of lease), after subsection (2) insert—
- “(2A) Notice by a tenant to a proprietor of land under subsection (2)—
- (a) must be in writing; and
 - (b) may be given to any person purporting to be authorised by the proprietor to receive the notice.”.
- (6) In section 25 (regulation of muirburn)—
- (a) before paragraph (a) insert—
 - “(za) makes muirburn or causes or procures the making of muirburn on any land otherwise than—
 - (i) during the muirburn season in accordance with section 23; or
 - (ii) in accordance with a licence granted under section 23C;”,
 - (b) paragraph (c) is repealed.
- (7) In section 26 (notices as to muirburn)—
- (a) for the title, substitute “Notice as to muirburn: general requirement”,
 - (b) for subsections (1) and (2) substitute—
 - “(1) A person who intends to make muirburn during the muirburn season must give notice in writing under this section to—
 - (a) the proprietor of the proposed muirburn site (if different from the person making the muirburn); and
 - (b) any occupier of land situated within 1 kilometre of the proposed muirburn site.

(An order under section 23B(1) may make provision as to other notice to be given in relation to certain periods; and section 24(2) makes provision as to other notice to be given by a tenant.)
 - (2) Notice need not be given to a person (“A”) under this section if A has given notice in writing to the person intending to make muirburn that A wishes not to be notified of any intention to make muirburn.
 - (3) Where there are 10 or more occupiers of land situated within 1 kilometre of the proposed muirburn site, the person making muirburn may, instead of giving notice under this section to each occupier separately in accordance with section 26A, notify those persons collectively by placing a notice in at least one newspaper circulating in the area which includes the proposed muirburn site.
 - (4) Notice under this section must—
 - (a) be given—
 - (i) after the expiry of the previous muirburn season; and
 - (ii) not less than 7 days before the muirburn is made;

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- (b) specify the land on which the muirburn is intended to be made;
 - (c) specify that the person being notified may, before the muirburn is made, require further information in relation to—
 - (i) the dates on or between which the muirburn is intended to be made;
 - (ii) the places at which the muirburn is intended to be made; and
 - (iii) the approximate extent of the proposed muirburn.
- (5) Where either the proprietor of the land or an occupier of land situated within 1 kilometre of the proposed muirburn site requests any of the further information mentioned in subsection (4)(c), the person intending to make the muirburn must make reasonable efforts to comply with the request not later than the end of the day before the muirburn is made.
- (6) Any notice required to be given to proprietors of land under this section may be given to any person purporting to be authorised by the proprietor to receive the notice.
- (7) Any person who fails to comply with the requirements of this section is guilty of an offence.”.
- (8) After that section insert—

“26A Giving of muirburn notices under section 24(2) or 26

- (1) Subject to the provisions of this section, any written notice required to be given to a person under section 24(2) or 26 may be given—
- (a) by delivering it to the person personally;
 - (b) by leaving it at, or posting it to, the usual or last known address of the person in the United Kingdom, or in a case where an address has been given by the person, at or to that address;
 - (c) where the person is—
 - (i) a body corporate, by leaving it at or posting it to the address of the registered or principal office of the body in the United Kingdom;
 - (ii) a partnership, by leaving it at or posting it to the principal office of the partnership in the United Kingdom;
 - (d) to the person by electronic communication of any particular form if—
 - (i) the person has agreed to be notified in that form;
 - (ii) the person has supplied the person who is to send the notice with the person’s electronic address or number; and
 - (iii) the electronic communication is capable of being accessed and understood by the person.
- (2) Where, after reasonable inquiry, the identity of an occupier cannot be ascertained for the purposes of giving notice under section 26, notice may be given by—
- (a) addressing the notice to “Any occupiers of the land” (describing it); and

- (b) affixing it to some conspicuous object on the land.
- (3) Unless the contrary is shown, a notice given in accordance with subsection (1)
 - (d) is taken to have been received 48 hours after it is given.”.
- (9) In section 27 (offences as to muirburn)—
 - (a) in the title, for “Offences” substitute “Penalties etc. for offences”,
 - (b) for the words “twenty-three or section twenty-five” substitute “25 or 26(7)”.

35 Offences by bodies corporate, Scottish partnerships etc. under the 1946 Act

After section 34 of the 1946 Act, insert—

“34A Offences by bodies corporate etc.

- (1) Where an offence under this Act has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of—
 - (a) a director, manager, secretary or other similar officer of the body; or
 - (b) a person who purported to act in any such capacity,he (as well as the body corporate) 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) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where an offence under this Act has been committed by a Scottish partnership or other unincorporated association and it is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of—
 - (a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;
 - (b) in relation to an unincorporated association other than a Scottish partnership, any person who was concerned in the management or control of the association or any person who was purporting to act in any such capacity,he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”.