



# Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

## PART 2

### WILDLIFE UNDER THE 1981 ACT

#### *Non-native species etc.*

VALID FROM 02/07/2012

#### 16 Species control orders etc.

After section 14C of the 1981 Act (non-native species etc.: code of practice) (inserted by section 15) insert—

##### “14D Power to make species control orders

- (1) A relevant body may make an order (a “species control order”) in respect of premises where—
  - (a) it is satisfied of the presence on the premises of—
    - (i) an invasive animal at a place outwith its native range; or
    - (ii) an invasive plant at a place outwith its native range; and
  - (b) any of subsections (2) to (4) applies.
- (2) This subsection applies where—
  - (a) the relevant body has offered to enter into an agreement with the owner or, as the case may be, occupier of the premises to control or eradicate—
    - (i) invasive animals outwith their native range; or
    - (ii) invasive plants outwith their native range,on the premises (referred to in this section as a “species control agreement”);

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- (b) 42 days have elapsed since the date of the offer; and
  - (c) the owner or occupier has refused or otherwise failed to enter into the agreement.
- (3) This subsection applies where—
- (a) a person has entered into a species control agreement with the relevant body; and
  - (b) the person has failed to comply with the terms of the agreement.
- (4) This subsection applies where the relevant body has failed to ascertain the name or address of any owner or occupier of the premises (having made reasonable efforts to do so) and accordingly has not been able to offer to enter into a species control agreement.
- (5) Subsection (4) does not apply unless—
- (a) the relevant body has given notice in accordance with subsection (6) stating that it wishes to offer to enter into a species control agreement;
  - (b) 48 hours have passed since the notice was given; and
  - (c) no owner or occupier of the premises has identified themselves to the relevant body.
- (6) A notice under this subsection must be addressed to “The owners and any occupiers” of the premises (describing it) and a copy of it must be affixed to some conspicuous object on the premises (in so doing the relevant body is to be treated as having provided notice to each owner or occupier whose name and address is unknown).

#### **14E Emergency species control orders**

- (1) Where a relevant body considers that the making of a species control order is urgently necessary, the relevant body may, despite section 14D(1)(b), make a species control order whether or not any of subsections (2) to (4) of section 14D apply (such an order is referred to in this Part as an “emergency species control order”).
- (2) An emergency species control order expires 49 days after it is made.

#### **14F Content of species control orders**

- (1) A species control order must—
- (a) describe the premises to which it relates;
  - (b) be accompanied by a map on which the premises to which it relates are delineated;
  - (c) specify the type of invasive animal or plant in question;
  - (d) specify—
    - (i) any operations which are to be carried out on the premises for the purpose of controlling or eradicating the type of invasive animal or plant in question;
    - (ii) the person who is to carry out the operations; and
    - (iii) how and when the operations are to be carried out;

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- (e) specify any operations which must not be carried out on the premises (referred to in this Part as “excluded operations”);
- (f) specify the date on which the order is to come into effect and the period for which it is to have effect; and
- (g) set out the circumstances in which an appeal may be made under section 14H against either the decision to make the order or the terms of the order.

(2) A species control order—

- (a) may provide for the making of payments by the relevant body making the order;
- (b) other than an emergency species control order, may provide for the making of payments by the owner or occupier of the premises to which the order relates,

to any person in respect of reasonable costs incurred by a person carrying out an operation under the order.

#### **14G Notice of species control orders**

(1) A relevant body making a species control order must give notice of the making of the order—

- (a) to the owner and any occupier of the premises to which the order relates; and
- (b) where the relevant body is a body other than the Scottish Ministers, to the Scottish Ministers.

(2) Notice must—

- (a) be in writing;
- (b) specify the relevant body's reasons for making the order;
- (c) attach a copy of the order; and
- (d) where the order is an emergency species control order, state that fact.

#### **14H Appeals in connection with species control orders**

(1) Any owner or occupier of premises to which a species control order relates may appeal to the sheriff if aggrieved by—

- (a) a decision of a relevant body to make the species control order; or
- (b) the terms of such an order.

(2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which the relevant body gave notice to the appellant of the decision being appealed.

(3) The sheriff may suspend any effect of an emergency species control order pending the determination of an appeal.

(4) The sheriff must determine an appeal under subsection (1) on the merits rather than by way of review and may do so by—

- (a) affirming the order in question;
- (b) directing the relevant body to amend the order in such manner as the sheriff may specify;

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- (c) directing the relevant body to revoke the order; or
  - (d) making such other order as the sheriff thinks fit.
- (5) A decision of the sheriff on appeal is final except on a point of law.

#### **14I Coming into effect of species control orders**

Unless a species control order specifies a later date under section 14F(1)(f), such an order has effect from—

- (a) in the case where an order is an emergency species control order, the giving of notice in accordance with section 14G;
- (b) in any other case—
  - (i) the expiry of the time limit for appealing against the decision to make the order; or
  - (ii) where such an appeal is made, its withdrawal or final determination.

#### **14J Review of species control orders**

- (1) A relevant body which has made a species control order may, when it thinks fit, review the order prior to its expiry for the purposes of determining whether it should make an order revoking the order.
- (2) If, on completion of a review, the relevant body decides that the species control order should be revoked, it may make an order to that effect.
- (3) The making of an order to revoke a species control order does not prevent a relevant body subsequently making a species control order in relation to the same premises.

#### **14K Offences in relation to species control orders**

- (1) Any person who, without reasonable excuse, fails to carry out, in the manner required by a species control order, an operation which the person is required by the order to carry out is guilty of an offence.
- (2) Any person who intentionally obstructs any person from carrying out an operation required to be carried out under a species control order is guilty of an offence.
- (3) Any person who, without reasonable excuse, carries out, or causes or permits to be carried out, any excluded operation is guilty of an offence.

#### **14L Enforcement of operations under species control orders**

- (1) This section applies where a relevant body considers—
  - (a) that any operation required to be carried out by a species control order it has made has not been carried out within the period or by the date specified in it; or
  - (b) that any such operation has been carried out otherwise than in the manner required under the order.
- (2) The relevant body—

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- (a) may carry out the operation, or such further work as is necessary to ensure that it is carried out, in the manner required under the order;
- (b) is not required to make any payment (and may recover any payments made) in pursuance of the species control order in relation to the operation in question; and
- (c) may recover from the person whom the species control order required to carry out the operation any expenses reasonably incurred by it in doing so (less any payment which the relevant body is required to make in relation to the carrying out of the operation under the order by virtue of section 14F(2)(a)).

#### **14M Species control orders: powers of entry**

- (1) A person authorised in writing by a relevant body may enter any premises for any of the following purposes—
  - (a) to determine whether or not to offer to enter into a species control agreement with the owner or, as the case may be, occupier of the premises;
  - (b) to determine whether or not to make or revoke a species control order;
  - (c) to serve notice to an owner or occupier of premises in accordance with section 14D(5)(a) or 14G;
  - (d) to ascertain whether an offence under section 14K is being, or has been, committed in relation to an order made by the relevant body;
  - (e) to carry out an operation or other work in pursuance of section 14L(2)(a).
- (2) A person so authorised to enter premises may not demand admission as of right to any land which is occupied unless—
  - (a) the entry is for a purpose mentioned in subsection (1)(a) or (b) and at least 24 hours' notice of the intended entry has been given;
  - (b) the entry is for a purpose mentioned in subsection (1)(c) or (d); or
  - (c) the entry is for a purpose mentioned in subsection (1)(e) and at least 14 days' notice of the intended entry has been given.
- (3) Subsection (2) does not apply in relation to entry in connection with an emergency species control order.
- (4) Nothing in this section authorises any person to break any lock barring access to premises which the person is authorised to enter.

#### **14N Species control orders: entry by warrant etc.**

- (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for a person authorised by a relevant body to enter premises for a purpose mentioned in section 14M(1) and that—
  - (a) admission to the premises has been refused;
  - (b) such refusal is reasonably apprehended;
  - (c) the premises are unoccupied;
  - (d) the occupier is temporarily absent from the premises;

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- (e) the giving of notice under section 14M(2) would defeat the object of the proposed entry; or
  - (f) the situation is one of urgency,
- the sheriff or justice may grant a warrant authorising the person to enter premises (including lockfast places), if necessary using reasonable force.
- (2) In the cases of a warrant under subsection (1)(a) to (d), a sheriff or justice must not grant a warrant unless satisfied that notice of the intended entry has been given in the manner described in section 14M.
- (3) A warrant under this section—
- (a) may be executed without notice; and
  - (b) 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.
- (4) Any person authorised by a warrant to enter any premises must, if required to do so by the owner or occupier or anyone acting on the owner or occupier's behalf, show that person the warrant.
- (5) Any person authorised by a warrant to use reasonable force—
- (a) must be accompanied by a constable when doing so; and
  - (b) may not use force against an individual.

#### **14O Species control orders: powers of entry: supplemental**

- (1) Any person who exercises a power of entry to premises in accordance with section 14M or 14N may—
- (a) be accompanied by any other person; and
  - (b) take any machinery, other equipment or materials on to the premises, for the purpose of assisting the person in the exercise of that power.
- (2) A power specified in subsection (1) which is exercisable under a warrant is subject to the terms of the warrant.
- (3) Any person leaving any premises which have been entered in exercise of a power conferred by section 14M or a warrant granted under section 14N, being either unoccupied premises or premises from which the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as the person found the premises.
- (4) A relevant body must compensate any person who has sustained damage by reason of—
- (a) the exercise by a person authorised by the relevant body of any powers of entry conferred on the person by section 14M or a warrant granted under section 14N; or
  - (b) the failure of a person so authorised to perform the duty imposed by subsection (3),
- unless the damage is attributable to the fault of the person who sustained it.
- (5) Any dispute as to a person's entitlement to compensation, or to the amount of such compensation, is to be determined by arbitration.

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#### **14P Interpretation of sections 14 to 14O**

- (1) This section applies to sections 14 to 14O only.
- (2) Any reference to the native range of an animal or plant, or a type of animal or plant, is a reference to the locality to which the animal or plant of that type is indigenous, and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise) by any person.
- (3) The native range of a hybrid animal or plant is any locality within the native range of both parents of the hybrid animal or plant.
- (4) Any reference to an invasive animal or invasive plant, or type of such an animal or plant, is a reference to an animal or plant of a type which if not under the control of any person, would be likely to have a significant adverse impact on—
  - (a) biodiversity;
  - (b) other environmental interests; or
  - (c) social or economic interests.
- (5) Any reference to premises—
  - (a) includes reference to land (including lockfast places and other buildings), movable structures, vehicles, vessels, aircraft and other means of transport; but
  - (b) does not include reference to dwellings.
- (6) Any reference to a relevant body is a reference to—
  - (a) the Scottish Ministers;
  - (b) Scottish Natural Heritage;
  - (c) the Scottish Environment Protection Agency; or
  - (d) the Forestry Commissioners.
- (7) Any reference to an animal includes a reference to ova, semen and milt of the animal.
- (8) “Plant” includes fungi and any reference to a plant includes a reference to—
  - (a) bulbs, corms and rhizomes of the plant; and
  - (b) notwithstanding section 27(3ZA), seeds and spores of the plant.”.

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