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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 279 (C. 25)**

**WILDLIFE**

**The Wildlife and Natural Environment (Scotland)  
Act 2011 (Commencement No. 1) Order 2011**

<i>Made</i>	- - - -	<i>21st June 2011</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>23rd June 2011</i>
<i>Coming into force</i>	- -	<i>29th June 2011</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 43(1) and (2)(a) of the Wildlife and Natural Environment (Scotland) Act 2011<sup>(1)</sup>.

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No. 1) Order 2011 and comes into force on 29th June 2011.

(2) In this Order—

“the 1981 Act” means the Wildlife and Countryside Act 1981<sup>(2)</sup>; and

“the 2011 Act” means the Wildlife and Natural Environment (Scotland) Act 2011.

**Appointed days**

**2.**—(1) 29th June 2011 is the day appointed for the following provisions of the Wildlife and Natural Environment (Scotland) Act 2011 to come into force:—

- (a) section 2 (application of the 1981 Act to game birds);
- (b) section 3 (protection of game birds etc. and prevention of poaching);
- (c) section 5 (sale of live or dead wild birds, their eggs etc.);
- (d) section 6(2) and (5) (protection of wild hares etc.), insofar as necessary to introduce Schedule 5A to the 1981 Act;
- (e) section 7 (prevention of poaching: wild hares, rabbits etc.);

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(1) 2011 asp 6.  
(2) 1981 c.69.

- (f) section 8 (sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully) but only insofar as it relates to an animal killed or taken in contravention of section 11G of the 1981 Act;
  - (g) section 9 (wild hares, rabbits etc.: licences), insofar as it relates to sections 11G(1) and 11I(1) of the 1981 Act;
  - (h) section 10 (wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close seasons);
  - (i) section 12 (single witness evidence in certain proceedings under the 1981 Act), except to the extent that it relates to an offence under section 10A(1) of the 1981 Act;
  - (j) section 18 (licences under the 1981 Act);
  - (k) section 19 (amendments to Schedule 6 to the 1981 Act);
  - (l) section 25 (modifications and repeals relating to Part 2 and game licensing) and the schedule, but only in respect of—
    - (i) Part 1 of the schedule; and
    - (ii) the first to the twelfth, the fourteenth to the seventeenth, and the last entry in the schedule;
  - (m) section 33 (protection of badgers);
  - (n) section 37 (combining sites of special scientific interest);
  - (o) section 38 (denotification of SSSIs: damage caused by authorised operations);
  - (p) section 39 (SSSIs: operations requiring consent); and
  - (q) section 40 (SSSI offences: civil enforcement).
- (2) 1st August 2011 is the day appointed for section 34 (Muirburn) of the 2011 Act to come into force.

St Andrew's House,  
Edinburgh  
21st June 2011

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings certain provisions of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6) (“the Act”) into force on 29th June 2011 and brings section 34 of the Act into force on 1st August 2011.

This Order brings the following provisions into force on 29th June 2011:—

- (a) section 2, with the effect that a “wild bird” as defined in section 27(1) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) includes the species formerly defined separately in that Act as game birds;
- (b) section 3 amends sections 1, 2, 5 and 26 of the 1981 Act and Schedule 2 to that Act, so that certain species bred in captivity and released for shooting or for conservation purposes come within the scope of the protections in section 1 of the 1981 Act, section 2 of and Schedule 2 to that Act provide for exceptions from those protections so that is lawful for certain persons to kill or take birds formerly treated as game birds during specified periods (including the re-enactment of provision for close seasons in respect of certain birds with minor modifications), section 5 of that Act enables the use of a cage trap or net to take certain birds for breeding purposes, and so that an order removing certain species from Part 1 of Schedule 2 to that Act is subject to affirmative procedure;
- (c) section 5, which amends sections 2 and 6 of and Schedule 3 to the 1981 Act so that the offences in section 6 of that Act relating in particular to the sale of dead birds apply instead to the sale of birds killed or taken unlawfully rather than their sale during particular periods of the year;
- (d) section 6(2) and (5), so that Schedule 5A (animals protected during a close season) is inserted into the 1981 Act;
- (e) section 7, which provides for new sections 11G and 11H of and Schedule 6A to the 1981 Act, with the effect that it is an offence to kill or take hares and rabbits without a legal right to do so;
- (f) section 8, which provides for a new section 11I of the 1981 Act, with the effect that it is an offence to possess, control, sell or offer to sell, possess or transport any wild animal or part of a wild animal which has been killed or taken in contravention of section 11G of that Act;
- (g) section 9, with the effect that sections 11G(1) and 11I(1) of the 1981 Act do not apply to anything done under and in accordance with a licence granted under section 16(3) and (4) (b) of the 1981 Act;
- (h) section 10, which enables the Scottish Ministers to add or remove animals from the lists in new Schedules 5A and 6A to the 1981 Act;
- (i) section 12, which amends section 19A of the 1981 Act to extend the admissibility of single witness evidence, except to the extent that it applies to section 10A(1) of the 1981 Act as prospectively introduced by section 6 of the Act;
- (j) section 18, which introduces a new social, economic or environmental purpose into section 16(3) of the 1981 Act, and provides for a new section 16A of that Act enabling the Scottish Ministers to delegate licence granting powers under section 16 of that Act;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (k) section 19, which amends Schedule 6 to the 1981 Act so that it is no longer an offence under the 1981 Act to kill or take by certain methods species which are also protected under the Conservation (Natural Habitats &c.) Regulations 1994 (S.I. 1994/2716);
- (l) section 25 and the schedule to the Act, but only in respect of repeal and modification of enactments relating to game and game licensing;
- (m) section 33, which amends sections 1, 2, 4, 5, 10, 11A, 12, 12A and 13 of the Protection of Badgers Act 1992 (c.51) (“the 1992 Act”) to provide for new offences and related matters, and to provide for a new section 10A of the 1992 Act enabling the Scottish Ministers to delegate licence granting powers under section 10 of that Act;
- (n) section 37, which provides for a new section 5A into the Nature Conservation (Scotland) Act 2004 (asp 6) (“the 2004 Act”) enabling the combination of Sites of Special Scientific Interest (“SSSI”);
- (o) section 38, which amends section 9 of the 2004 Act enabling the de-notification of SSSIs damaged by authorised operations under that Act;
- (p) section 39, which amends sections 13, 14 and 17 of the 2004 Act so that Scottish Natural Heritage (“SNH”) does not require to consent to certain operations carried out by or at the instigation of certain public bodies;
- (q) section 40, which provides for a new section 20A of the 2004 Act enabling civil enforcement through restoration notices where SNH is satisfied that a person has committed an offence in relation to a SSSI under section 19(1) or (3) of the 2004 Act.

This Order brings section 34 into force on 1st August 2011. Section 34 amends the muirburn provisions of the Hill Farming Act 1946 (“the 1946 Act”).

Subsection (2) inserts a new section 23 into the 1946 Act which deals with the permitted times for making muirburn and establishes a “standard” and an “extended” muirburn season. Subsection (3) amends section 23A of the 1946 Act and extends the purposes for which the muirburn season may be varied and allows those dates to be varied on a geographical or phased basis.

Subsection (4) inserts a new section 23B into the 1946 Act which allows the Scottish Ministers to make further regulation by order, where they have extended the muirburn season under section 23A(1). Subsection (4) also inserts a new section 23C into the 1946 Act allowing the Scottish Ministers to license out of season muirburn in certain circumstances. The Scottish Ministers may delegate this licensing power to SNH and may make further provision in regulations about muirburn licences.

Subsection (5) amends section 24 of the 1946 Act in relation to the giving of notice by tenants to proprietors of land. Subsection (6) amends section 25 of the 1946 Act to create an offence of making muirburn outwith the muirburn season (section 23) and otherwise than in accordance with a muirburn licence (section 23C).

Subsection (7) amends section 26 of the 1946 to set new notification requirements in relation to muirburn. It makes it an offence to make muirburn without having provided the proprietor of the land, or an occupier, within 1km of the proposed muirburn site written notification. It also makes provision as to the timescales for giving and content of muirburn notices. Subsection (8) inserts section 26A into the 1946 Act which specifies the permitted methods for giving muirburn notices.

Sections 1, 42 and 43 of the Act came into force on Royal Assent (7th April 2011).