



# Wildlife and Natural Environment (Scotland) Act 2011 2011 asp 6 CONTENTS

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# Wildlife and Natural Environment (Scotland)

## Act 2011

### 2011 asp 6

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 2nd March 2011 and received Royal Assent on 7th April 2011**

An Act of the Scottish Parliament to make provision in connection with wildlife and the natural environment; and for connected purposes.

#### **PART 1**

##### DEFINED EXPRESSIONS

#### **1 Defined expressions in this Act**

In this Act—

- “the 1946 Act” means the Hill Farming Act 1946 (c.73),
- “the 1981 Act” means the Wildlife and Countryside Act 1981 (c.69),
- “the 1992 Act” means the Protection of Badgers Act 1992 (c.51),
- “the 1996 Act” means the Deer (Scotland) Act 1996 (c.58),
- “the 2004 Act” means the Nature Conservation (Scotland) Act 2004 (asp 6).

#### **PART 2**

##### WILDLIFE UNDER THE 1981 ACT

##### *Wild birds, their nests and eggs*

#### **2 Application of the 1981 Act to game birds**

In section 27(1) of the 1981 Act (interpretation of Part I)—

- (a) the definition of “game bird” is repealed,
- (b) in the definition of “wild bird”, the words “or, except in sections 5 and 16, any game bird” are repealed.

#### **3 Protection of game birds etc. and prevention of poaching**

- (1) The 1981 Act is amended as follows.

- (2) In the italic heading before section 1 (protection of wild birds, their nests and eggs), at the end add “and prevention of poaching”.
- (3) In that section, for subsection (6) (“wild birds” in section 1 does not include birds shown to have been bred in captivity), substitute—
- “(6) For the purposes of this section, the definition of “wild bird” in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless—
- (a) it has been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme; or
- (b) it is a mallard, grey or red-legged partridge, common pheasant or red grouse which is no longer in captivity and is not in a place where it was reared.”.
- (4) In section 2 (exceptions to section 1)—
- (a) in the title, at the end add “: acts by certain persons outside close season”,
- (b) in subsection (1), after “this section,” insert “where subsection (1A) applies”,
- (c) after that subsection insert—
- “(1A) This subsection applies where—
- (a) the person who kills or injures had—
- (i) a legal right to kill such a bird; or
- (ii) permission, from a person who had a right to give permission, to kill such a bird; or
- (b) the person who takes had—
- (i) a legal right to take such a bird; or
- (ii) permission, from a person who had a right to give permission, to take such a bird.”,
- (d) in subsection (3), after “Christmas Day” insert “in relation to those birds included in Part I of Schedule 2 which are also included in Part IA of that Schedule”,
- (e) after subsection (3), insert—
- “(3A) Subject to the provisions of this section, where subsection (3B) applies a person does not commit an offence under section 1 by reason of the taking for the purposes of breeding of—
- (a) a partridge or pheasant included in Part I of Schedule 2; or
- (b) an egg of such a bird.
- (3B) This subsection applies where—
- (a) the person who takes does so during the period of 28 days commencing with the first day of the close season for the bird; and
- (b) the person who takes had—
- (i) a legal right to take such a bird; or
- (ii) permission, from a person who had a right to give permission, to take such a bird.

- (3C) A person does not commit an offence under section 1 by reason of the taking of a red grouse if—
- (a) the grouse is taken—
    - (i) for the purpose of preventing the spread of disease; and
    - (ii) with the intention of releasing it from captivity after no more than 12 hours; and
  - (b) the person had—
    - (i) a legal right to take such a grouse; or
    - (ii) permission, from a person who had a right to give permission, to take such a grouse.”,
- (f) in subsection (4)—
- (i) after paragraph (b) insert—
    - “(ba) in the case of pheasant, the period in any year commencing with 2nd February and ending with 30th September;
    - (bb) in the case of partridge, the period in any year commencing with 2nd February and ending with 31st August;”,
  - (ii) after paragraph (c) insert—
    - “(ca) in the case of black grouse, the period commencing with 11th December in any year and ending with 19th August in the following year;
    - (cb) in the case of ptarmigan and red grouse, the period commencing with 11th December in any year and ending with 11th August in the following year;”,
- (g) in subsection (7)—
- (i) for “a person” substitute “such persons”,
  - (ii) at the end add “as he considers appropriate”.
- (5) In section 5(5) (use of cage traps or nets for breeding purposes), for “game bird” substitute “grouse, mallard, partridge or pheasant included in Part I of Schedule 2”.
- (6) In section 26 (regulations, orders, notices etc.)—
- (a) in subsection (2)—
    - (i) after “than” insert “—
      - (a) an order under any of”,
    - (ii) for “and” substitute “or”,
    - (iii) after “11(4)” insert “; and
      - (b) an order under section 22(1)(a) which removes from Part I of Schedule 2 black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge;”,
  - (b) in subsection (3)—
    - (i) after “No” insert “—
      - (a)”,

- (ii) after “11(4)” insert “; or
- (b) order under section 22(1)(a) which removes from Part I of Schedule 2 any bird referred to in paragraph (b) of subsection (2),”.
- (7) In Schedule 2, Part I (birds which may be killed or taken outside the close season)—
- (a) before the entries relating to the bird with the common name “Mallard” insert in columns 1 and 2 the following entries—
- |                |                            |
|----------------|----------------------------|
| “Grouse, Black | Tetrao tetrix              |
| Grouse, Red    | Lagopus lagopus scoticus”, |
- (b) after the entries relating to the bird with the common name “Moorhen” insert in columns 1 and 2 the following entries—
- |                       |                       |
|-----------------------|-----------------------|
| “Partridge, Grey      | Perdix perdix         |
| Partridge, Red-legged | Alectoris rufa        |
| Pheasant, Common      | Phasianus colchicus”, |
- (c) after the entries relating to the bird with the common name “Pochard” insert in columns 1 and 2 the following entries—
- |            |                 |
|------------|-----------------|
| “Ptarmigan | Lagopus mutus”. |
|------------|-----------------|
- (8) In Schedule 2, after Part I insert—

**“PART IA**

EXCEPTION: BIRDS INCLUDED IN PART I WHICH MAY NOT BE KILLED OR TAKEN ON  
 SUNDAYS OR CHRISTMAS DAY

<i>Common name</i>	<i>Scientific name</i>
Coot	Fulica atra
Duck, Tufted	Aythya fuligula
Gadwall	Anas strepera
Goldeneye	Bucephala clangula
Goose, Canada	Branta canadensis
Goose, Greylag	Anser anser
Goose, Pink-footed	Anser brachyrhynchus
Mallard	Anas platyrhynchos
Moorhen	Gallinula chloropus
Pintail	Anas acuta
Plover, Golden	Pluvialis apricaria
Pochard	Aythya ferina
Shoveler	Anas clypeata
Snipe, Common	Gallinago gallinago
Teal	Anas crecca
Wigeon	Anas penelope

Woodcock

*Scolopax rusticola*”.

#### **4 Areas of special protection for wild birds**

- (1) The 1981 Act is amended as follows.
- (2) Section 3 (areas of special protection) is repealed.
- (3) In section 4 (exceptions to sections 1 and 3)—
  - (a) for the title, substitute “Further exceptions to s. 1”,
  - (b) in subsection (1) the words “or in any order made under section 3” are repealed,
  - (c) in subsections (2) and (3) the words “or any order made under section 3” are repealed.
- (4) In section 16 (power to grant licences)—
  - (a) in subsection (1) the words “and orders under section 3” are repealed,
  - (b) in subsection (2) for “and orders under section 3 do” substitute “does”.
- (5) In section 26 (regulations, orders, notices etc.)—
  - (a) in subsection (2) “3,” is repealed,
  - (b) in subsection (4)(a) the words from “, except” to “3,” are repealed.

#### **5 Sale of live or dead wild birds, their eggs etc.**

- (1) The 1981 Act is amended as follows.
- (2) In section 2—
  - (a) in subsection (4) (close seasons), for “this section and section 1” substitute “section 1, this section and section 6”,
  - (b) in subsection (6) (period of special protection forms part of close season), for “this section and section 1” substitute “section 1, this section and section 6”.
- (3) In section 6 (sale etc. of live or dead wild birds, eggs etc.)—
  - (a) in subsection (1)(a)—
    - (i) the words from “other” to “3” are repealed,
    - (ii) after “egg” where it second occurs insert “other than—
      - (i) a bird included in Part I of Schedule 3 (see also subsection (5));
      - (ii) a bird included in Part 1A of that Schedule to which subsection (1A) applies; or
      - (iii) an egg to which subsection (1B) applies or any part of such an egg”,
  - (b) after subsection (1) insert—

“(1A) This subsection applies to a bird which—

    - (a) was bred in captivity and remained in captivity or a place where it was reared;



- (b) was a wild bird for the purposes of section 1 (see section 1(6)) and was taken by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird outside the close season for the bird; or
  - (c) was such a wild bird of the following type and was taken by a person with such right or permission during the period of 28 days which commences with the first day of its close season—
    - (i) a partridge included also in Part I of Schedule 2; or
    - (ii) a pheasant included also in that Part.
- (1B) This subsection applies to the following eggs—
- (a) an egg of a bird included in Part IA of Schedule 3 to which subsection (1A) applies; or
  - (b) an egg of a bird included in Part IA of Schedule 3 to which that subsection does not apply if the egg was taken—
    - (i) outside the close season for the bird or during the period of 28 days commencing with the first day of its close season; and
    - (ii) by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird.”,
- (c) in subsection (2)(a)—
- (i) after “Part II” insert “, IIA”,
  - (ii) after “Schedule 3” insert “(see also subsections (5B) and (6))”,
- (d) for subsection (5) substitute—
- “(5) Any reference in this section to any bird included in Part I of Schedule 3 is a reference to any bird included in that Part which—
- (a) was bred in captivity;
  - (b) has been ringed or marked in accordance with regulations made by the Scottish Ministers; and
  - (c) has not been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme.
- (5A) Regulations made for the purposes of subsection (5)(b) may make different provision for different birds or different provisions of this section.”,
- (e) after subsection (5A) (as inserted by paragraph (d)) insert—
- “(5B) Any reference in this section to any bird included in Part IIA of Schedule 3 is a reference to any bird included in that Part which was killed outside the close season for the bird by a person who had a legal right to kill such a bird or permission, from a person who had a right to give permission, to kill such a bird.”,
- (f) for subsection (6), substitute—

“(6) Any reference in this section to any bird included in Part III of Schedule 3 is a reference, during the period commencing with 1st September in any year and ending with 28th February of the following year, to any bird included in that Part.”.

(4) In Schedule 3 (birds which may be sold)—

(a) after Part I insert—

**“PART IA**

ALIVE IF TAKEN IN CAPTIVITY OR BY CERTAIN PERSONS OUTSIDE CLOSE SEASON OR DURING  
FIRST 28 DAYS OF CLOSE SEASON

<i>Common name</i>	<i>Scientific name</i>
Grouse, Red	<i>Lagopus lagopus scoticus</i>
Mallard	<i>Anas platyrhynchos</i>
Partridge, Grey	<i>Perdix perdix</i>
Partridge, Red-legged	<i>Alectoris rufa</i>
Pheasant, Common	<i>Phasianus colchicus</i> ”,

(b) after Part II insert—

**“PART IIA**

DEAD IF KILLED OUTSIDE CLOSE SEASON BY CERTAIN PERSONS

<i>Common name</i>	<i>Scientific name</i>
Coot	<i>Fulica atra</i>
Duck, Tufted	<i>Aythya fuligula</i>
Grouse, Black	<i>Tetrao tetrix</i>
Grouse, Red	<i>Lagopus lagopus scoticus</i>
Mallard	<i>Anas platyrhynchos</i>
Partridge, Grey	<i>Perdix perdix</i>
Partridge, Red-legged	<i>Alectoris rufa</i>
Pheasant, Common	<i>Phasianus colchicus</i>
Pintail	<i>Anas acuta</i>
Plover, Golden	<i>Pluvialis apricaria</i>
Pochard	<i>Aythya ferina</i>
Ptarmigan	<i>Lagopus mutus</i>
Shoveler	<i>Anas clypeata</i>
Snipe, Common	<i>Gallinago gallinago</i>
Teal	<i>Anas crecca</i>
Wigeon	<i>Anas penelope</i>
Woodcock	<i>Scolopax rusticola</i> ”,

- (c) in Part III (birds which may be sold dead from 1st September to 28th February), the entries relating to birds with the following common names are repealed—

Coot  
 Duck, Tufted  
 Mallard  
 Pintail  
 Plover, Golden  
 Pochard  
 Shoveler  
 Snipe, Common  
 Teal  
 Wigeon  
 Woodcock.

*Wild hares, rabbits etc.*

**6 Protection of wild hares etc.**

- (1) The 1981 Act is amended as follows.  
 (2) After section 10, insert—

**“10A Protection of wild hares etc.**

- (1) Subject to the provisions of this Part, any person who intentionally or recklessly kills, injures or takes any wild animal included in Schedule 5A in the close season for the animal is guilty of an offence.
- (2) In this section, “close season” means—
- (a) in the case of a mountain hare, the period in any year beginning with 1st March and ending with 31st July;
- (b) in the case of a brown hare, the period in any year beginning with 1st February and ending with 30th September.
- (3) The Scottish Ministers may by order vary the close season for any wild animal included in Schedule 5A which is specified in the order.
- (4) If it appears to the Scottish Ministers expedient that any wild animals included in Schedule 5A should be protected during any period outside the close season for those animals, they may by order declare any period not exceeding 14 days as a period of special protection for those animals.
- (5) Before making an order under subsection (4), the Scottish Ministers must consult such persons appearing to them to be representative of persons interested in the killing or taking of animals of the kind proposed to be protected by the order as they consider appropriate.
- (6) Where an order is made under subsection (4), this section has effect as if any period of special protection declared by the order forms part of the close season for those animals.

- (7) An order under subsection (3) or (4) may be made as respects the whole of Scotland or any part of Scotland specified in the order.
- (8) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.

**10B Exceptions to s. 10A**

- (1) A person is not guilty of an offence under section 10A(1) by reason of the killing of an animal included in Schedule 5A if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering.
- (2) A person is not guilty of an offence under section 10A(1) by reason of taking any such animal if he shows that—
  - (a) he had a legal right to take such an animal or permission, from a person who had a right to give permission, to take such an animal; and
  - (b) the animal—
    - (i) had been disabled otherwise than by his unlawful act; and
    - (ii) was taken solely for the purpose of tending it and releasing it when no longer disabled.
- (3) An authorised person is not guilty of an offence under section 10A(1) by reason of the killing or injuring of an animal included in Schedule 5A if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.
- (4) An authorised person is not entitled to rely on the defence provided by subsection (3) as respects any action if—
  - (a) it had become apparent, before the action was taken, that it would prove necessary for the purpose mentioned in that subsection; and
  - (b) either—
    - (i) a licence under section 16 authorising the action had not been applied for as soon as reasonably practicable after that fact had become apparent; or
    - (ii) an application for such a licence had been determined.
- (5) An authorised person is not entitled to rely on the defence provided by subsection (3) as respects any action unless he notified the appropriate authority as soon as reasonably practicable after the action was taken that he had taken it.
- (6) In subsection (5), “the appropriate authority” has the same meaning as in section 16(9).
- (7) Nothing in section 10A makes unlawful—
  - (a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or
  - (b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”

- (3) In section 26(2) (regulations, orders, notices etc.), after “5” insert “, 10A(4)”.
- (4) In the title of Schedule 5 (animals which are protected), at the end add “under section 9”.
- (5) After that Schedule, insert—

“SCHEDULE 5A  
*(introduced by sections 10A and 22)*

ANIMALS WHICH ARE PROTECTED UNDER SECTION 10A IN THEIR CLOSE SEASON

<i>Common name</i>	<i>Scientific name</i>
Hare, mountain	<i>Lepus timidus</i>
Hare, brown	<i>Lepus europaeus</i> ”.

**7 Prevention of poaching: wild hares, rabbits etc.**

- (1) The 1981 Act is amended as follows.
- (2) In the italic heading before section 9 (protection of certain wild animals), at the end add “and prevention of poaching”.
- (3) After section 11F (inserted by section 13(3)), insert—

**“11G Prevention of poaching: wild hares, rabbits etc.**

- (1) Subject to the provisions of this Part, any person who intentionally or recklessly kills, injures or takes any wild animal included in Schedule 6A is guilty of an offence.
- (2) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.

**11H Exceptions to s. 11G**

- (1) A person is not guilty of an offence under section 11G(1)—
  - (a) by reason of the killing of an animal included in Schedule 6A if he had a legal right, or permission from a person who had a right to give permission, to kill such an animal; or
  - (b) by reason of the taking of such an animal if he had a legal right, or permission from a person who had a right to give permission, to take such an animal.
- (2) A person is not guilty of an offence under section 11G(1) by reason of the killing of an animal included in Schedule 6A if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering.
- (3) Nothing in section 11G makes unlawful—
  - (a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or
  - (b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.
- (4) After Schedule 6, insert—

“SCHEDULE 6A  
(introduced by sections 11G and 22)

ANIMALS NOT TO BE POACHED

<i>Common name</i>	<i>Scientific name</i>
Hare, mountain	<i>Lepus timidus</i>
Hare, brown	<i>Lepus europaeus</i>
Rabbit	<i>Oryctolagus cuniculus</i> ”.

**8 Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully**

- (1) The 1981 Act is amended as follows.
- (2) After section 11H (inserted by section 7(3)), insert—

**“11I Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully**

- (1) Any person who does any of the following is guilty of an offence—
  - (a) has in his possession or control any live or dead wild animal which has been killed or taken in contravention of section 10A or 11G, or any part of or anything derived from such an animal;
  - (b) sells, offers or exposes for sale, or has in his possession or transports for the purposes of sale any such animal or any part of or anything derived from such an animal; or
  - (c) publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells or intends to buy or sell any of those things.
- (2) A person is not guilty of an offence under subsection (1) in relation to an activity mentioned in that subsection if he shows that he carried out the activity concerned with reasonable excuse.
- (3) In any proceedings for an offence under subsection (1), the animal in question is to be presumed to have been a wild animal unless the contrary is shown.”.

**9 Wild hares, rabbits etc.: licences**

In section 16 of the 1981 Act (certain offences not committed if activity done in accordance with licence)—

- (a) in subsection (3)—
  - (i) after “9(1), (2), (4) and (4A),” insert “10A(1),”
  - (ii) after “11C” (inserted by section 13(4)) insert “, 11G(1),”
- (b) in subsection (4)(b) after “9(5)” insert “, 11I(1)”.

**10 Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close seasons**

In section 22 of the 1981 Act (power to vary schedules and prescribe close seasons)—

- (a) in subsection (1)(b), for “or 6” substitute “, 5A, 6 or 6A”,

(b) after subsection (2), insert—

“(2ZA) An order under subsection (1) adding any animal to Schedule 5A may prescribe a close season in the case of that animal for the purposes of section 10A.”.

## 11 **Wild hares and rabbits: miscellaneous**

(1) The 1981 Act is amended as follows.

(2) Before section 12 (protection of certain mammals), insert—

### **“12YA Relaxation of restriction on night shooting of hares and rabbits**

Schedule 7, which amends certain Acts prohibiting night shooting of hares and rabbits by occupiers of land etc., has effect.”.

(3) Section 12 (protection of certain mammals) is repealed.

(4) In Schedule 7—

(a) for the title substitute “Amendment of Acts In Relation To Night Shooting of Hares and Rabbits”,

(b) in the section reference after the Schedule title, for “12” substitute “12YA”.

### *Wild birds, hares, rabbits etc.: single witness evidence*

## 12 **Single witness evidence in certain proceedings under the 1981 Act**

In section 19A of the 1981 Act (single witness evidence in Scotland as to taking or destruction of eggs)—

(a) in the section title for “as to taking or destruction of eggs” substitute “in certain proceedings”,

(b) for the words from “an” to “Act” substitute “any of the following offences”,

(c) at the end insert “—

(a) an offence under section 1(1)(a) in relation to a grouse, partridge, pheasant or ptarmigan included in Part I of Schedule 2;

(b) an offence under section 1(1)(c);

(c) an offence under section 6(1) in relation to a grouse, partridge or pheasant included in Part IA of Schedule 3;

(d) an offence under section 6(2) in relation to a grouse, partridge, pheasant or ptarmigan included in Part IIA of that Schedule;

(e) an offence under section 10A(1), 11G(1) or 11I(1)”.

### *Snares*

## 13 **Snares**

(1) The 1981 Act is amended as follows.

(2) In section 11 (prohibition of certain methods of killing or taking wild animals)—

(a) after subsection (1), insert—

“(1A) For the purposes of subsection (1)(aa), a snare which is of such a nature or so placed (or both) as to be calculated to cause unnecessary suffering to any animal coming into contact with it includes—

- (a) where the person who sets in position or otherwise uses the snare does so to catch any animal other than a fox, a snare which is not fitted with a stop which is capable of preventing the noose of the snare reducing in circumference to less than 13 centimetres;
- (b) where the person who sets in position or otherwise uses the snare does so to catch a fox, a snare which is not fitted with a stop which is capable of preventing the noose of the snare reducing in circumference to less than 23 centimetres;
- (c) a snare which is neither—
  - (i) staked to the ground; nor
  - (ii) attached to an object,in a manner which will prevent the snare being dragged by an animal caught by it; and
- (d) a snare which is set in a place where an animal caught by the snare is likely to—
  - (i) become fully or partially suspended; or
  - (ii) drown.”,

(b) subsections (3) to (3B) and (3D) are repealed.

(3) After that section, insert—

**“11A Snares: training, identification numbers, tags etc.**

- (1) Any person who sets a snare in position must have an identification number (see also subsections (3), (4) and (7) in relation to identification numbers and training).
- (2) Any person who sets in position or otherwise uses a snare must ensure—
  - (a) that a tag is fitted on the snare in such a manner that it is not capable of being easily removed from the snare;
  - (b) that there is displayed on the tag (in a manner in which it will remain readable) the identification number of the person who set the snare in position; and
  - (c) where the snare is intended to catch the following types of animal—
    - (i) brown hares or rabbits; or
    - (ii) foxes,that there is also displayed on the tag (in a manner in which it will remain readable) a statement that it is intended to catch the type of animal in question.
- (3) For the purposes of this section and sections 11D and 11E, the identification number of a person who sets a snare in position is the identification number issued to him by a chief constable.
- (4) A chief constable—



- (a) on receipt of an appropriate application from any person for an identification number for the purpose of setting snares in position in the chief constable's police area; and
  - (b) on being satisfied that the applicant has been trained to set a snare in position and on the circumstances in which the setting of snares is an appropriate method of predator control,
- must grant the application and issue the applicant with an identification number.
- (5) Any person who fails to comply with subsection (1) is guilty of an offence.
  - (6) Any person who—
    - (a) has an identification number and sets in position or otherwise uses a snare; but
    - (b) fails to comply with subsection (2) in any respect,is guilty of an offence.
  - (7) Where an identification number has been issued by a chief constable under subsection (4), the person to whom it is issued—
    - (a) may use it also for tags fitted on any snares which he sets in position in any other chief constable's police area; and
    - (b) need not apply to any other chief constable for a separate identification number in relation to setting any such snare in position.
  - (8) The Scottish Ministers may by order make provision as regards—
    - (a) when a person has been trained to set a snare in position and on the circumstances in which the setting of snares is an appropriate method of predator control;
    - (b) how a chief constable is to be satisfied that an applicant for an identification number has been so trained;
    - (c) the manner in which a tag is to be fitted for the purposes of subsection (2)(a) (including the material from which a tag is to be made);
    - (d) the manner in which an identification number is to appear on a tag for the purposes of subsection (2)(b), and in which a statement is to be displayed on a tag for the purposes of subsection (2)(c);
    - (e) the form of and manner of making an application for an identification number;
    - (f) the determining by the Scottish Ministers, or by chief constables in accordance with the order, of any fee to accompany the application and the charging of any such fee;
    - (g) the issuing of identification numbers under subsection (4);
    - (h) the keeping of records of identification numbers issued, the persons to whom they are issued and the sharing of information from such records;
    - (i) such other matters in relation to training, tags or identification numbers (including the making of an application for, or the issuing of, an identification number) as they consider appropriate.

(9) In this section—

“appropriate application” means an application made in accordance with the provisions of an order under subsection (8);

“chief constable” means a chief constable of a police force appointed under section 4(1) of the Police (Scotland) Act 1967;

“chief constable’s police area” means the police area for which the police force of which the chief constable is such officer is maintained; and “police area” is to be construed in accordance with section 50 of that Act.

### **11B Snares: duty to inspect etc.**

- (1) Any person who sets a snare in position must while it remains in position inspect it or cause it to be inspected, at least once every day at intervals of no more than 24 hours, for the following purposes—
  - (a) to see whether any animal is caught by the snare; and
  - (b) to see whether the snare is free-running.
- (2) Any person who while carrying out such an inspection—
  - (a) finds an animal caught by the snare must, during the course of the inspection, release or remove the animal (whether it is alive or dead); and
  - (b) finds that the snare is not free-running must remove the snare or restore it to a state in which it is free-running.
- (3) Subject to the provisions of this Part, any person who—
  - (a) without reasonable excuse, contravenes subsection (1); or
  - (b) contravenes subsection (2),is guilty of an offence.
- (4) For the purposes of this section, a snare is “free-running” if—
  - (a) it is not self-locking;
  - (b) it is not capable (whether because of rust, damage or other condition or matter) of locking; and
  - (c) subject only to the restriction on such movement created by the stop fitted in accordance with section 11(1A)(a) or (b), the noose of the snare is able at all times freely to become wider or tighten (and is not prevented from doing so whether because of rust, damage or other condition or matter other than the stop).

### **11C Snares: authorisation from landowners etc.**

Subject to the provisions of this Part, any person who without reasonable excuse—

- (a) while on any land has in his possession any snare without the authorisation of the owner or occupier of the land; or

(b) sets any snare in position on any land without the authorisation of the owner or occupier of the land,  
is guilty of an offence.

**11D Snares: presumption arising from identification number**

The identification number which appears on a tag fitted on a snare is presumed in any proceedings to be the identification number of the person who set the snare in position.

**11E Snares: record keeping**

- (1) Any person who has an identification number must keep a record of the following—
  - (a) the location of every snare set in position by the person which remains in position;
  - (b) the location of every other snare set in position by the person within the past two years;
  - (c) the date on which each snare mentioned in paragraph (a) or (b) was set;
  - (d) the date on which each snare mentioned in paragraph (b) was removed;
  - (e) in relation to each animal caught in a snare mentioned in paragraph (a) or (b)—
    - (i) the type of animal;
    - (ii) the date it was found;
  - (f) such other information as the Scottish Ministers may by order specify.
- (2) For the purposes of subsection (1)(a) and (b), the location of a snare is to be recorded—
  - (a) by reference to a map; or
  - (b) by such other means (for example, by means of a description) capable of readily identifying the location.
- (3) Any person who, without reasonable excuse, fails to comply with the duty under subsection (1) is guilty of an offence.
- (4) Any person who—
  - (a) is requested to produce the record kept under subsection (1) to a constable; and
  - (b) fails to do so within 21 days of being so requested,is guilty of an offence.
- (5) Subsection (1) does not apply in relation to any snare set in position by a person before the person is issued with an identification number.

**11F Snaring: review and report to the Scottish Parliament**

- (1) The Scottish Ministers must carry out, or secure the carrying out by another person of, a review of the operation and effect of—
    - (a) section 11 and any orders made under that section (in so far as the section and the orders make provision as regards snaring);
    - (b) sections 11A, 11B, 11C, 11D and 11E and any orders made under those sections.
  - (2) A review must be carried out under subsection (1) no later than—
    - (a) 31st December 2016 (“the first review date”);
    - (b) the end of the period of 5 years beginning with the first review date; and
    - (c) the end of each subsequent period of 5 years.
  - (3) In carrying out a review under subsection (1), the matters that must be considered include whether in the opinion of the Ministers (or, if the review is being carried out by another person, that person) amendment of this Act or enactment of other legislation is appropriate.
  - (4) In carrying out a review under subsection (1), the Scottish Ministers (or, if the review is being carried out by another person, that person) must consult such persons and organisations as they consider (or, as the case may be, the other person considers) have an interest in it.
  - (5) The Scottish Ministers must, as soon as practicable after a review is carried out under subsection (1), lay a report of the review before the Scottish Parliament.”.
- (4) In section 16(3) (certain offences not committed if activity done in accordance with licence), after “11(1), (2) and (3C)(a)” insert “, 11C”.
  - (5) In section 17 (false statements made for obtaining registration or licence etc.)—
    - (a) in the title, after “registration” insert “, identification number”,
    - (b) after “7(1)” insert “, an identification number under section 11A(4)”.

*Non-native species etc.*

**14 Non-native species etc.**

- (1) The 1981 Act is amended as follows.
  - (2) In section 14 (introduction of new species etc.)—
    - (a) for subsections (1) to (2) substitute—
      - “(1) Subject to the provisions of this Part, any person who—
        - (a) releases, or allows to escape from captivity, any animal—
          - (i) to a place outwith its native range; or
          - (ii) of a type the Scottish Ministers, by order, specify; or
        - (b) otherwise causes any animal outwith the control of any person to be at a place outwith its native range,
- is guilty of an offence.

- (2) Subject to the provisions of this Part, any person who plants, or otherwise causes to grow, any plant in the wild at a place outwith its native range is guilty of an offence.
- (2A) Subsection (1) does not apply to the following animals where those animals are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting—
  - (a) common pheasant;
  - (b) red-legged partridge.
- (2B) The Scottish Ministers may, by order, specify—
  - (a) other types of animals to which subsection (1)(a)(i) or (1)(b) does not apply; and
  - (b) types of plants to which subsection (2) does not apply.
- (2C) The Scottish Ministers may, by order, disapply subsection (1) or (2) in relation to—
  - (a) any person specified in the order;
  - (b) any conduct undertaken for the purposes of any enactment (including any enactment contained in or made under an Act of the Scottish Parliament) so specified; or
  - (c) any conduct authorised by, under or in pursuance of any such enactment.
- (2D) An order under subsection (1)(a)(ii), (2B) or (2C) may make different provision for different cases and, in particular, for—
  - (a) different types of animal or plant;
  - (b) different circumstances or purposes;
  - (c) different persons;
  - (d) different times of the year; and
  - (e) different areas or places.”,
- (b) in subsection (3), for “prove” substitute “show”,
- (c) subsections (5) and (6) are repealed.
- (3) After section 14ZB (codes of practice in connection with invasive non-native species: England and Wales) insert—

**“14ZC Prohibition on keeping etc. of invasive animals or plants**

- (1) Subject to the provisions of this Part, any person who keeps, has in the person’s possession, or has under the person’s control—
  - (a) any invasive animal of a type which the Scottish Ministers, by order, specify; or
  - (b) any invasive plant of a type so specified,
 is guilty of an offence.
- (2) An order under subsection (1) may make different provision for different cases and, in particular, for—
  - (a) different types of invasive animal or invasive plant;

- (b) different circumstances or purposes;
    - (c) different persons;
    - (d) different times of the year; and
    - (e) different areas or places.
  - (3) Subject to subsection (4), it is a defence to a charge of committing an offence under subsection (1) to show that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.
  - (4) Where the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged must not, without leave of the court, be entitled to rely on the defence unless, within a period ending 7 days before the hearing, the person has served on the prosecutor a notice giving such information or assisting in the identification of the other person as was then in the person's possession.
  - (5) The Scottish Ministers may, in an order under subsection (1), make provision for or in connection with the compensation of persons who, at the time of the coming into force of the order, may no longer keep, have in their possession or have under their control, an animal or plant.”.
- (4) In section 14A (prohibition on sale etc. of certain animals or plants)—
- (a) in the title, for “certain” substitute “invasive”,
  - (b) for subsection (1) substitute—
    - “(1) This section applies to—
      - (a) any type of invasive animal; or
      - (b) any type of invasive plant,the Scottish Ministers, by order, specify.”,
  - (c) for subsection (3) substitute—
    - “(3) An order under subsection (1) may make different provision for different cases and, in particular, for—
      - (a) different types of invasive animal or invasive plant;
      - (b) different circumstances or purposes;
      - (c) different persons;
      - (d) different times of the year; and
      - (e) different areas or places.”.
- (5) For section 14B (guidance: non-native species) substitute—
- “14B Notification of presence of invasive animals or plants etc.**
- (1) The Scottish Ministers may, by order, make provision about the notification of the presence of—
    - (a) invasive animals; or
    - (b) invasive plants,at any specified place outwith their native range where persons are, or become, aware of the presence of such animals or plants.

- (2) An order under subsection (1) may make provision for, or in connection with—
  - (a) the persons (or types of persons) who must make a notification;
  - (b) the circumstances in which a notification must be made;
  - (c) the times of the year when a notification must be made;
  - (d) the persons to whom a notification must be made;
  - (e) the form and method of any notification; and
  - (f) the period within which any notification must be made.
- (3) An order under subsection (1) may require a person (or type of person) to make a notification only if the Scottish Ministers consider that the person (or that type of person) has or should have knowledge of, or is likely to encounter, the invasive animal or invasive plant to which the order relates.
- (4) An order under subsection (1) may make different provision for different cases and, in particular, for—
  - (a) different types of invasive animal or invasive plant;
  - (b) different circumstances or purposes;
  - (c) different persons;
  - (d) different times of the year; and
  - (e) different areas or places.
- (5) A person who, without reasonable excuse, fails to make a notification in accordance with the requirements of an order made under subsection (1) is guilty of an offence.”.

## 15 **Non-native species etc.: code of practice**

After section 14B (notification of presence of invasive animals or plants etc.) of the 1981 Act insert—

### “14C **Non-native species etc.: code of practice**

- (1) The Scottish Ministers may make a code of practice for the purpose of providing practical guidance in respect of—
  - (a) the application of any of sections 14, 14ZC, 14A and 14B;
  - (b) the application of any order made under any of those sections;
  - (c) species control agreements;
  - (d) species control orders;
  - (e) licences granted under section 16(4)(c).
- (2) A code of practice may, in particular, provide guidance on—
  - (a) how Scottish Natural Heritage, the Scottish Environment Protection Agency, the Forestry Commissioners and the Scottish Ministers should co-ordinate the way in which they exercise their respective functions in relation to animals or plants which are outwith their native range;

- (b) which species, sub-species, varieties or races of animal or plant, or hybrids of animals or plants, are considered to be particular types of animals or plants for the purposes of—
  - (i) this section;
  - (ii) section 14, 14ZC, 14A or 14B;
  - (iii) any order made under any of those sections;
  - (iv) species control agreements;
  - (v) species control orders;
  - (vi) the code;
- (c) the native range of any type of animal or plant;
- (d) the circumstances in which any type of animal is considered to be—
  - (i) in captivity; or
  - (ii) under the control or otherwise of a person at a place outwith its native range;
- (e) the circumstances in which a type of plant is considered to be growing in the wild outwith its native range, and conduct that would cause any type of plant to grow in the wild;
- (f) the circumstances in which a type of invasive animal or plant is considered to be kept in a person's possession or under a person's control;
- (g) which types of animals or plants are invasive and the circumstances (if any) in which any such type of animal or plant is not considered to be invasive;
- (h) best practice (where permitted) for—
  - (i) keeping animals of any type which are invasive or which are kept at a place from which they may not be put outwith the control of any person;
  - (ii) keeping plants of any type which are invasive or which are kept at a place outwith their native range;
  - (iii) releasing animals of any type from captivity; and
  - (iv) planting, or otherwise causing to grow, any type of plant in the wild;
- (i) best practice for—
  - (i) containing, capturing or killing animals of any type which are outwith the control of any person and which are—
    - (A) at a place outwith their native range; or
    - (B) animals of a type specified in an order made under section 14(1)(a)(ii);
  - (ii) containing, uprooting or destroying plants of any type which are growing in the wild outwith their native range; and



- (iii) transferring animals or plants of any type which are not permitted to be kept by virtue of section 14ZC into the custody of Scottish Natural Heritage or any other person (and for keeping such animals or plants prior to the transfer);
- (j) the making and content of species control agreements;
- (k) the making, content of and enforcement of species control orders.
- (3) The Scottish Ministers may revoke, replace or revise a code of practice.
- (4) The first code of practice, and any replacement code of practice, made under this section—
  - (a) requires to be laid before, and approved by resolution of, the Scottish Parliament; and
  - (b) comes into effect on such date after approval under paragraph (a) as is specified in the code.
- (5) Any revision to a code of practice (or revocation of a code of practice which is not being replaced) must—
  - (a) be laid before the Scottish Parliament; and
  - (b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).
- (6) The Scottish Parliament may, before any such revision or revocation comes into effect, resolve that it is not to come into effect.
- (7) The Scottish Ministers must publish a code of practice (or any replacement or revision) made under this section no later than the day before the code (or replacement or revision) is to come into effect.
- (8) Before making, revoking, replacing or revising a code of practice, the Scottish Ministers must consult—
  - (a) Scottish Natural Heritage; and
  - (b) any other person appearing to them to have an interest in the code.
- (9) A person's failure to comply with a provision of a code of practice—
  - (a) does not of itself render the person liable to proceedings of any sort; but
  - (b) may be taken into account in determining any question in any such proceedings.
- (10) In any proceedings for an offence under section 14, 14ZC, 14A, 14B or 14K—
  - (a) failure to comply with a relevant provision of a code of practice may be relied upon as tending to establish liability;
  - (b) compliance with a relevant provision of a code of practice may be relied upon as tending to negative liability.”.

## 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”);
  - (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;
  - (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;
  - (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—
  - (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;
  - (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.

#### **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.”.

## **17 Non-native species etc.: further provision**

- (1) The 1981 Act is amended as follows.
- (2) In section 16 (power to grant licences), in subsection (4)(c), after “14” insert “, 14ZC”.
- (3) In section 21 (penalties, forfeitures etc.)—
  - (a) in subsection (1) after “13” insert “, 14B”,
  - (b) in subsection (4)—
    - (i) after “14” insert “, 14ZC”,
    - (ii) in paragraph (a), for “six” substitute “12”,
  - (c) after that subsection insert—

“(4ZA) Any person guilty of an offence under section 14K is liable—

    - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding £40,000, or to both;
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”,
  - (d) in subsection (6)(b) for “or 14A” substitute “, 14ZC, 14A, 14B or 14K”.
- (4) In section 22(1) (power to vary schedules)—



- (a) in paragraph (b) the words “or Part I of Schedule 9” are repealed,
  - (b) in paragraph (c) the words “or Part II of Schedule 9” are repealed.
- (5) In section 24 (functions of GB conservation bodies), after subsection (4) insert—
- “(4A) The functions of Scottish Natural Heritage include the power to advise or assist—
    - (a) another relevant body exercising functions under section 14L(2)(a); and
    - (b) a person authorised to enter premises under section 14M exercising functions under that section.”.
- (6) In section 26 (regulations, orders, notices etc.)—
- (a) in subsection (1), for “this Part” substitute “a provision of this Part other than section 14D”,
  - (b) in subsection (4)—
    - (i) for “this Part” substitute “a provision of this Part other than section 14D”,
    - (ii) in paragraph (a), after “2(6)” insert “, 14, 14ZC, 14A or 14B”,
    - (iii) in paragraph (b), after “section” insert “14, 14ZC, 14A, 14B,”,
  - (c) after that subsection, insert—
    - “(4A) The Scottish Ministers may make an order under section 14, 14ZC or 14A only where they have consulted—
      - (a) Scottish Natural Heritage; and
      - (b) any other person appearing to them to have an interest in the making of the order.
    - (4B) Subsection (4A) does not apply where the Scottish Ministers consider it necessary to make the order urgently and without consultation.”.
- (7) In section 70A (service of notices), after subsection (2) insert—
- “(2A) Subsection (1)(cc) of the said section 271 shall not apply to a notice required to be served under section 14G.
  - (2B) Subsection (2) of the said section 271 shall not apply to a notice required to be served under section 14D(5)(a).”.
- (8) Schedule 9 (animals and plants to which section 14 applies) is repealed.

### *Species licences*

## **18 Licences under the 1981 Act**

- (1) The 1981 Act is amended as follows.
- (2) In section 16 (power to grant licences)—
  - (a) in subsection (3)—
    - (i) the word “or” immediately after paragraph (g) is repealed,
    - (ii) after paragraph (h) insert “; or
    - (i) for any other social, economic or environmental purpose,”,
  - (b) after subsection (3) insert—

- “(3A) The appropriate authority shall not grant a licence under subsection (3)(i) unless it is satisfied—
- (a) that undertaking the conduct authorised by the licence will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit; and
  - (b) that there is no other satisfactory solution.”,
- (c) subsection (8B) is repealed,
- (d) for subsections (9) to (9ZC) substitute—
- “(9) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 16A.
- (9ZA) The Scottish Ministers must consult Scottish Natural Heritage before granting or modifying a licence under any of subsections (1) to (5).
- (9ZB) Subsection (9ZA) does not apply in relation to licences granted under—
- (a) paragraph (i), (j) or (k) of subsection (1);
  - (b) paragraph (f), (g) or (h) of subsection (3); or
  - (c) paragraph (c) of subsection (4).”,
- (e) subsection (13) is repealed.
- (3) After that section insert—

**“16A Delegation of licence-granting power: Scotland**

- (1) The Scottish Ministers may delegate their functions in relation to licences under section 16 to—
  - (a) Scottish Natural Heritage; or
  - (b) a local authority.
- (2) But a function may be delegated to a local authority only in so far as it relates to—
  - (a) the development of land within the meaning of section 26(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8); or
  - (b) the demolition of buildings within the meaning of section 55 of the Building (Scotland) Act 2003 (asp 8).
- (3) A delegation may be, to any degree, general or specific and may in particular relate to—
  - (a) a particular type of bird, other animal or plant;
  - (b) a particular licence or type of licence;
  - (c) a particular area.
- (4) 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.
- (5) A delegation to—

- (a) Scottish Natural Heritage under subsection (1)(a) is to be made by written direction;
- (b) a local authority under subsection (1)(b) is to be made by order.
- (6) A local authority which is delegated a function under subsection (1)(b) must, before granting or modifying a licence, consult Scottish Natural Heritage.
- (7) The Scottish Ministers may modify or revoke a direction under subsection (5)(a).
- (8) Where a direction or order under subsection (5) is revoked, any existing licence granted under the direction or order continues to have effect (unless the revoking direction or order provides otherwise)."
- (4) In section 26 (regulations, orders, notices etc.)—
  - (a) in subsection (4)—
    - (i) after paragraph (a) insert—
      - “(aa) in the case of an order under section 16A(5)(b), shall consult Scottish Natural Heritage;”
    - (ii) in paragraph (b), after “14B,” (as inserted by section 17(6)(b)(iii)) insert “16A(5)(b) or”,
    - (iii) in paragraph (c) after “may,” insert “except in the case of an order under section 16A(5)(b),”
  - (b) in subsection (5) after “Part” insert “, other than an order under section 16A(5)(b),”.

## **19 Amendment of Schedule 6 to the 1981 Act**

In Schedule 6 to the 1981 Act (animals which may not be killed or taken by certain methods) the entries relating to the animals with the following common names are repealed—

- Bats, Horseshoe (all species),
- Bats, Typical (all species),
- Cat, Wild,
- Dolphin, Bottle-nosed,
- Dolphin, Common,
- Dormice (all species),
- Marten, Pine,
- Otter, Common,
- Polecat,
- Porpoise, Harbour (otherwise known as Common Porpoise).

### *Annual report on wildlife crime*

## **20 Annual report on wildlife crime**

After section 26A of the 1981 Act insert—

**“26B Annual report on wildlife crime**

- (1) The Scottish Ministers must, after the end of each calendar year, lay before the Scottish Parliament a report on offences relating to wildlife.
- (2) The report may, in particular, include—
  - (a) information on the incidence and prosecution of such offences during the year to which the report relates;
  - (b) information on research and advice relating to wildlife which the Scottish Ministers consider relevant to such offences.
- (3) The report need only include information in relation to such offences relating to wildlife as the Scottish Ministers consider appropriate.
- (4) For the purposes of this section, an offence relating to wildlife is an offence—
  - (a) under Part 1 of this Act; or
  - (b) under any other enactment which the Scottish Ministers consider may have an impact on wildlife.”.

*Offence of knowingly causing or permitting certain offences*

**21 Offence of knowingly causing or permitting certain offences under the 1981 Act**

- (1) The 1981 Act is amended as follows.
- (2) In section 6 (sale etc. of live or dead wild birds, eggs etc.), after subsection (2), insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section (other than subsections (1)(b) and (2)(b)) shall be guilty of an offence.”.
- (3) In section 7 (registration etc. of certain captive birds), after subsection (5), insert—

“(5A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section shall be guilty of an offence.”.
- (4) In section 15A (possession of pesticides), after subsection (2), insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by subsection (1) shall be guilty of an offence.”.

*Enforcement*

**22 Wildlife inspectors etc.**

- (1) The 1981 Act is amended as follows.
- (2) In section 6 (sale etc. of live or dead wild birds, eggs etc.) subsections (9) and (10) are repealed.
- (3) In section 7 (registration etc. of certain captive birds) subsections (6) and (7) are repealed.
- (4) In section 19ZC (wildlife inspectors: Scotland)—
  - (a) in subsection (3)—

- (i) in paragraph (a), after “9(5)” insert “, 11I(1)”,
- (ii) in paragraph (d) for “or 14A” substitute “, 14ZC, 14A, 14B or 14K”,
- (iii) in paragraph (e) for the words from “verifying” to the end substitute “—
  - (i) verifying any statement or representation made, or document or information supplied, by an occupier in connection with an application for, or the holding of, a relevant registration or licence; or
  - (ii) ascertaining whether a condition to which a relevant registration or licence was subject to has been complied with.”,
- (b) in subsection (5) for “13(2), 14 or 14A” substitute “11I(1), 13(2), 14, 14ZC, 14A, 14B or 14K”,
- (c) in subsection (9), in the definition of “relevant registration or licence” in paragraph (b) for “13(2), 14 or 14A” substitute “11I(1), 13(2), 14, 14ZC or 14A”.
- (5) In section 19ZD (power to take samples: Scotland)—
  - (a) in subsections (3) and (4) for “13(2), 14 or 14A” substitute “11I(1), 13(2), 14, 14ZC, 14A, 14B or 14K”,
  - (b) in subsection (10) after paragraph (b) insert—
    - “(c) “tissue” means any type of biological material other than blood.”.
- (6) In section 24 (functions of GB conservation bodies), in subsection (4)—
  - (a) immediately after paragraph (a) insert “or”,
  - (b) the word “or” immediately after paragraph (b) is repealed,
  - (c) paragraph (c) is repealed.

## 23 Offences by Scottish partnerships etc.

After section 69 of the 1981 Act (offences by bodies corporate etc.), insert—

### “69A Offences by Scottish partnerships etc.

Where a Scottish partnership or other unincorporated association is guilty of an offence under Part 1 of this Act and that offence is proved to have been committed with the consent or connivance of, or to be 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 is 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.”.

*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—
  - (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
    - (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).”.

*Modifications and repeals relating to Part 2 and game licensing*

**25 Modifications and repeals relating to Part 2 and game licensing**

- (1) The modifications in Part 1 of the schedule have effect.
- (2) The enactments mentioned in the first column of Part 2 of the schedule are repealed to the extent specified in the second column.

**PART 3**

DEER

**26 Deer management etc.**

- (1) The 1996 Act is amended as follows.
- (2) In section 1 (SNH’s deer functions)—

- (a) in subsection (1)(a), for “conservation,” substitute “conservation of deer native to Scotland, the”,
- (b) in subsection (2)—
  - (i) the word “and” immediately after paragraph (b) is repealed,
  - (ii) after paragraph (c) insert—
    - “(d) the interests of public safety; and
    - (e) the need to manage the deer population in urban and peri-urban areas.”.
- (3) In section 3 (power of SNH to facilitate exercise of functions)—
  - (a) in subsection (1)—
    - (i) the word “and” immediately after paragraph (a) is repealed,
    - (ii) after paragraph (b) insert “; and
    - (c) to assist any person or organisation in reaching agreements with third parties,”,
  - (b) after subsection (2) insert—
    - “(3) A public body or office-holder issued guidance or advice under subsection (1)(a) must have regard to such guidance or advice in exercising any functions to which the guidance relates.”.
- (4) In section 4(1) (appointment of panels), the words “, not exceeding nine,” are repealed.
- (5) In section 18(2) (taking or killing at night), for paragraph (a) substitute—
  - “(a) the taking or killing is necessary—
    - (i) to prevent damage to crops, pasture, human or animal foodstuffs, or to woodland; or
    - (ii) in the interests of public safety; and”.

## **27 Deer management code of practice**

- (1) After section 5 of the 1996 Act insert—

*“Code of practice on deer management*

### **5A Code of practice on deer management**

- (1) SNH must draw up a code of practice for the purpose of providing practical guidance in respect of deer management.
- (2) The code of practice may, in particular—
  - (a) recommend practice for sustainable deer management;
  - (b) make provision about collaboration in deer management;
  - (c) set out examples of circumstances in which SNH may seek to secure a control agreement or make a control scheme;
  - (d) make different provision for different cases and, in particular, for different circumstances, different times of the year or different areas.
- (3) SNH must from time to time review the code of practice.
- (4) SNH may replace or revise the code of practice.



- (5) Before drawing up, replacing or revising the code, SNH must consult any person appearing to them to have an interest in the code.
  - (6) SNH must submit a proposed code of practice (or a proposed replacement or revision) to the Scottish Ministers and, on receiving it, the Scottish Ministers may—
    - (a) approve it, with or without modifications; or
    - (b) reject it.
  - (7) Where the Scottish Ministers reject a proposed code of practice (or a proposed replacement or revision) under subsection (6)(b) above they may either instruct SNH to submit a new code (or replacement or revision) or they may substitute a new code (or replacement or revision) of their own devising.
  - (8) The first code of practice, and any replacement code of practice—
    - (a) must be laid before, and approved by resolution of, the Scottish Parliament; and
    - (b) comes into effect on such date after approval under paragraph (a) as is specified in the code.
  - (9) Any revision to a code of practice must—
    - (a) be laid before the Scottish Parliament; and
    - (b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).
  - (10) The Scottish Parliament may, before such revision comes into effect, resolve that it is not to come into effect.
  - (11) The Scottish Ministers must publish a code of practice (or any replacement or revision) no later than the day before the code (or replacement or revision) is to come into effect.
  - (12) SNH must—
    - (a) monitor compliance with a code of practice drawn up under this section; and
    - (b) have regard to such a code in exercising its functions under this Act.”.
- (2) In section 45(1) (interpretation) of the 1996 Act, after the definition of “animal foodstuffs” insert—
- ““code of practice on deer management” means the code of practice currently in operation in pursuance of section 5A of this Act;”.

## **28 Control agreements and control schemes etc.**

- (1) The 1996 Act is amended as follows.
- (2) In section 7 (control agreements)—
  - (a) in subsection (1)—
    - (i) after “SNH” insert “, having had regard to the code of practice on deer management,”,
    - (ii) the word “deer”, where first occurring, is repealed,

- (iii) in paragraph (a)—
  - (A) at the beginning insert “deer or steps taken or not taken for the purposes of deer management”,
  - (B) in sub-paragraph (i), after “foodstuffs,” insert “to the welfare of deer”,
  - (C) the word “or” immediately after sub-paragraph (i) is repealed,
  - (D) after that sub-paragraph insert—
    - “(ia) damage to public interests of a social, economic or environmental nature; or”,
- (iv) in paragraph (b), at the beginning insert “deer”,
- (v) for the words “the deer in that locality should be reduced in number” substitute “or for the remedying of such damage, measures require to be taken in relation to the management of deer”,
- (vi) the words “for that reduction in number” are repealed,
- (b) in subsection (3) after “SNH” insert “, having had regard to the code of practice on deer management”,
- (c) in subsection (4)—
  - (i) after “After” insert “it has given notice to such owners and occupiers of land as it considers to be substantially interested that”,
  - (ii) for the words from first “such” to “interested” substitute “those owners or occupiers”,
- (d) in subsection (5)—
  - (i) the word “and” immediately after paragraph (d) is repealed,
  - (ii) after paragraph (e) insert “; and
  - (f) set out measures, or steps towards taking such measures, which the owners or occupiers are to take during each 12 month period for which the agreement has effect”,
- (e) after subsection (6) insert—
  - “(7) SNH must, on at least an annual basis, review a control agreement for the purpose of assessing compliance with its provisions.”.
- (3) In section 8 (control schemes)—
  - (a) for subsection (1) substitute—
    - “(A1) This subsection applies where SNH has given notice under subsection (4) of section 7 of this Act and—
      - (a) either—
        - (i) SNH is satisfied that it is not possible to secure a control agreement or that a control agreement is not being carried out; or
        - (ii) 6 months have elapsed since SNH gave the notice and no agreement has been reached on the matters mentioned in that subsection; and
      - (b) SNH continues to have the view that required it to consult under that subsection.

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- (1) Where subsection (A1) above applies and SNH, having had regard to the code of practice on deer management, is satisfied that action is necessary for the purposes mentioned in subsection (1) or, as the case may be, subsection (3) of section 7 of this Act, it shall make a scheme (a “control scheme”) for the carrying out of such measures as it considers necessary for those purposes.”,
- (b) in subsection (2)—
- (i) for “Subsection (1) above does” substitute “Subsections (A1) and (1) above do”,
  - (ii) at the end insert “(except where a purpose of the control agreement is to remedy damage caused, directly or indirectly, by deer or by steps taken or not taken for the purposes of deer management).”.
- (c) subsection (5) is repealed,
- (d) after subsection (7) insert—
- “(7A) Where any control scheme has been confirmed, SNH must, on at least an annual basis, review it for the purpose of assessing compliance with its provisions.”.
- (4) In section 10 (emergency measures)—
- (a) in sub-paragraph (i) of subsection (1)(a) the word “serious” is repealed,
  - (b) after that sub-paragraph insert—
- “(ia) are causing damage to their own welfare or the welfare of other deer;”.
- (5) In section 11 (application of section 10 to natural heritage), the word “serious” is repealed.
- (6) In Schedule 2 (provisions as to control schemes)—
- (a) in paragraph 1(b)—
- (i) for the words from “two” to “situated” substitute “such manner as SNH thinks fit”,
  - (ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,
- (b) in paragraph 3, for the words from “shall” to “may” substitute “—
- (a) must consider the objection, and
  - (b) may”,
- (c) in paragraph 4—
- (i) the word “either” where it first occurs is repealed,
  - (ii) the words from “; or” to the end are repealed,
- (d) in paragraph 6(b)—
- (i) for the words from “two” to “situated” substitute “such manner as the Scottish Ministers think fit”,
  - (ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,
- (e) in paragraph 8, for the words from “shall” to “may” where it second occurs substitute “—

- (a) must consider the objection, and
  - (b) may”,
  - (f) in paragraph 9—
    - (i) the word “either” where it first occurs is repealed,
    - (ii) the words from “; or” to the end are repealed,
  - (g) paragraph 11 is repealed,
  - (h) in paragraph 12(b)—
    - (i) for the words from “the” where it first occurs to “situated” substitute “such manner as the Scottish Ministers think fit”,
    - (ii) in sub-sub-paragraph (ii), the words “within the district” are repealed,
  - (i) in paragraph 13—
    - (i) in sub-paragraph (1), for “and (3)” substitute “to (4)”,
    - (ii) for sub-paragraphs (2) and (3) substitute—
- “(2) Any owner or occupier of land who is aggrieved by—
- (a) a decision of the Scottish Ministers to—
    - (i) confirm a control scheme,
    - (ii) make a scheme varying a control scheme, or
    - (iii) revoke a control scheme, or
  - (b) the terms or conditions of such a scheme,
- may appeal to the Scottish Land Court.
- (3) An appeal under sub-paragraph (2) must be lodged not later than 28 days after the date of publication of the notice referred to in paragraph 12(b).
  - (4) The Scottish Land Court must determine an appeal under sub-paragraph (2) on the merits rather than by way of review and may do so by—
    - (a) affirming the control scheme,
    - (b) directing the Scottish Ministers to revoke the scheme,
    - (c) making such other order as it thinks fit.”.

**29 Deer: close seasons etc.**

- (1) The 1996 Act is amended as follows.
- (2) In section 5 (close season authorisations)—
  - (a) in subsection (6)—
    - (i) the words from the beginning to “and” where it first occurs are repealed,
    - (ii) for paragraphs (a) and (b) substitute—
      - “(a) the taking or killing is necessary—
        - (i) to prevent damage to any crops, pasture or human or animal foodstuffs on any agricultural land which forms part of that land;  
or

- (ii) to prevent damage to any enclosed woodland which forms part of that land; or
- (b) the taking or killing is necessary—
  - (i) to prevent damage to any unenclosed woodland which forms part of that land; or
  - (ii) to prevent damage, whether directly or indirectly, to the natural heritage generally; or
  - (iii) in the interests of public safety,
 and no other means of control which might reasonably be adopted in the circumstances would be adequate.”.
- (b) after subsection (7), add—
  - “(8) An authorisation under subsection (6) or (7) above—
    - (a) may be, to any degree, general or specific (including as regards the land in relation to which it is granted);
    - (b) may be granted to a particular person or to a category of persons.”.
- (3) In section 26 (right of occupier in respect of deer causing serious damage)—
  - (a) in the title, the word “serious” is repealed,
  - (b) in subsection (1)—
    - (i) the words from “Notwithstanding” to “Act,” are repealed,
    - (ii) the word “serious” is repealed,
  - (c) after that subsection insert—
    - “(1A) Subsection (1) above does not apply during any period fixed by order under section 5(1) of this Act in relation to the sex and species of the deer concerned.”.
- (4) In section 37 (restrictions on granting of certain authorisations)—
  - (a) in subsection (1), at the beginning insert “Except as mentioned in subsection (1A) below,”,
  - (b) after that subsection, insert—
    - “(1A) Subsection (1) above does not apply to an authorisation under section 5(6) of this Act to any of the following persons to take or kill, for the purpose of preventing any damage mentioned in section 5(6)(a), any deer found on land falling within section 26(1)(a) or (b) of this Act (“section 26 land”)—
      - (a) the occupier of the section 26 land; or
      - (b) if authorised by the occupier—
        - (i) the owner of the section 26 land;
        - (ii) an employee of the owner; or
        - (iii) an employee of the occupier, or any other person normally resident on, the section 26 land.”.

**30 Register of persons competent to shoot deer etc.**

- (1) The 1996 Act is amended as follows.
- (2) Before section 17, insert the following italic heading—

*“Unlawful killing, taking and injuring of deer”.*
- (3) In section 17 (unlawful killing, taking and injuring of deer), subsection (4) is repealed.
- (4) After that section, insert—

*“Register of persons competent to shoot deer*

**17A Register of persons competent to shoot deer**

- (1) The Scottish Ministers may by regulations—
  - (a) make provision for the establishment and operation of a register of persons competent to shoot deer in Scotland;
  - (b) prohibit any person from shooting deer unless the person is—
    - (i) registered; or
    - (ii) supervised by a registered person;
  - (c) provide that being a registered person is sufficient to meet the requirements as to fitness and competence under sections 26(2)(d) and 37(1);
  - (d) require registered persons or owners or occupiers of land to submit cull returns to SNH.
- (2) Regulations under subsection (1) above—
  - (a) may make such supplementary, incidental or consequential provision as the Scottish Ministers think fit and may, in particular, make provision (or allow SNH to make provision) in relation to—
    - (i) who is to keep and maintain the register;
    - (ii) applications for registration (or for amendment of, or removal from, the register);
    - (iii) the determination of applications for registration (including the criteria to be used to determine whether a person is competent to shoot deer);
    - (iv) the imposition of conditions on the granting of an application (including conditions about compliance with any requirement for a registered person to submit a cull return);
    - (v) the amendment of the register;
    - (vi) the removal of a person from the register (including by revocation of registration);
    - (vii) the charging of fees in connection with registration;
    - (viii) appeals against decisions to—
      - (A) refuse to register a person;
      - (B) impose conditions on the granting of an application;
      - (C) remove a person from the register;

- (ix) circumstances in which a person shooting deer is to be regarded as being, or not being, supervised by a registered person;
  - (x) the information to be included in cull returns;
  - (xi) the periods in respect of, and within, which cull returns are to be submitted;
  - (xii) the form and manner in which cull returns are to be submitted;
  - (xiii) the repeal of section 40; and
  - (xiv) consequential modification of any of sections 5, 16, 18, 26 or 37 of, or Schedule 3 to, this Act; and
- (b) may make different provision for different purposes.
- (3) Before making regulations under subsection (1) above, the Scottish Ministers (or a person nominated by them) must consult such persons and organisations as they consider (or, as the case may be, the nominated person considers) have an interest in the regulations.
- (4) Any person who shoots a deer on any land in contravention of regulations made under subsection (1)(b) above is guilty of an offence.
- (5) Subsection (4) above does not apply where a person shoots a deer for the purpose mentioned in section 25 of this Act.
- (6) Any person who—
- (a) fails without reasonable cause to submit a cull return in accordance with regulations made under subsection (1)(d) above; or
  - (b) knowingly or recklessly provides any information in a cull return so submitted which is, in a material particular, false or misleading,
- is guilty of an offence.
- (7) In this section, “cull return”—
- (a) when required to be submitted by a registered person, means a written statement showing the number of deer of each species and of each sex which to his knowledge has been killed; and
  - (b) when required to be submitted by an owner or occupier of land, means a written statement showing the number of deer of each species and of each sex which to his knowledge has been taken or killed on the land.

### **17B Review of competence etc. by SNH**

- (1) SNH must carry out a review of the following matters if the power in section 17A(1) is not exercised by 1st April 2014—
- (a) levels of competence among persons who shoot deer in Scotland;
  - (b) the effect of such levels of competence on deer welfare.
- (2) In any such review, the matters SNH must consider include—
- (a) the extent to which such persons have been trained to shoot deer and the availability and nature of such training;

- (b) any available evidence as regards any effect of the absence of such training, or the nature of such training, on the welfare of deer which have been shot.
- (3) If SNH carries out a review, it must—
- (a) when doing so consult such persons and organisations as it considers have an interest in the review; and
- (b) publish a report of the review.”.
- (5) Before section 18, insert the following italic heading—
- “Other offences and attempts to commit offences”.*
- (6) In section 30 (power to convict of alternative offence), after “17” insert “, 17A(4)”.
- (7) In section 31(4) (forfeiture of deer), after “17(1), (2) or (3)” insert “, 17A(4)”.
- (8) In section 45(1) (interpretation)—
- (a) after the definition of “red deer” insert—
- ““registered person” means a person registered in accordance with regulations under section 17A(1);”,
- (b) after the definition of “roe deer” insert—
- ““shoot” means discharge a firearm of a class prescribed in an order under section 21(1) of this Act; and “shooting” is to be construed accordingly;”.
- (9) In Schedule 3 (penalties), after the entry for section 17(3) insert—

“17A(4)	Shooting deer when not registered or supervised	a fine of level 4 on the standard scale for each deer in respect of which the offence is committed or 3 months imprisonment or both	
17A(6)	Failure to submit cull return or making false or misleading cull return	a fine of level 3 on the standard scale or 3 months imprisonment or both”.	

### 31 Action intended to prevent suffering

- (1) The 1996 Act is amended as follows.
- (2) In section 25 (action intended to prevent suffering)—
- (a) before paragraph (a), insert—
- “(za) a deer which is starving and which has no reasonable chance of recovering;”,
- (b) in paragraph (b), the word “by” is repealed.

### 32 Offences by bodies corporate, Scottish partnerships etc. under the 1996 Act

- (1) The 1996 Act is amended as follows.
- (2) In section 29 (offences by bodies corporate)—



- (a) the existing text becomes subsection (1),
  - (b) after that subsection, insert—
    - “(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) After that section, insert—

**“29A Offences by Scottish partnerships etc.**

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 to be 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.”.

**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—
  - “(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.
  - (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);
      - (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 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.
- (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;
    - (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.”.

## PART 5

### BIODIVERSITY

#### **36 Reports on compliance with biodiversity duty**

After section 2 of the 2004 Act insert—

##### **“2A Reports on compliance with biodiversity duty**

- (1) A public body must prepare and publish a biodiversity report within 3 years of—
  - (a) the base date,
  - (b) the date on which a report was last published by the body under this subsection.
- (2) A biodiversity report is a report on the actions taken by the body in pursuance of its duty under section 1 during the period to which the report relates.
- (3) The base date is—
  - (a) the date on which section 36 of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6) comes into force, or
  - (b) where the body is established after that date, the date on which the body is established.
- (4) A report under this section—
  - (a) is to be prepared in such form and published in such manner as the body thinks fit,
  - (b) may be incorporated within another report prepared or published by the body.”.

## PART 6

### SITES OF SPECIAL SCIENTIFIC INTEREST

#### **37 Combining sites of special scientific interest**

- (1) The 2004 Act is amended as follows.
- (2) After section 5 insert—

##### **“5A Combining sites of special scientific interest**

- (1) Where SNH considers that two or more sites of special scientific interest should be combined, it may notify that fact to the persons who are the interested parties in relation to the sites in question.
- (2) Subsections (4) to (7) of section 3 apply in relation to a notification under subsection (1) as they apply to a notification under section 3(1), but as if—
  - (a) references in section 3(4)(a)(ii) and (iii) to a natural feature were references to the natural features by reason of which SNH considers the original sites to be of special interest, and
  - (b) section 3(4) required the notification to also be accompanied by a revised site management statement prepared in relation to the combined site of special scientific interest.

- (3) Accordingly, from the date when notification is given under subsection (1)—
  - (a) that notification is an “SSSI notification” for the purposes of this Act,
  - (b) the combined site of special scientific interest is a single “site of special scientific interest” for the purposes of this Act, and
  - (c) the original SSSI notifications cease to have effect.
- (4) SNH must give public notice describing the general effect of an SSSI notification given by virtue of subsection (1) in such manner (including on the internet or by other electronic means) as SNH thinks fit.
- (5) Nothing in this section allows SNH to—
  - (a) include any land in a combined site of special scientific interest which was not included in at least one of the original sites of special scientific interest,
  - (b) add to the operations requiring consent specified in the original SSSI notifications (otherwise than by extending the original area to which any such operation requiring consent related so as to include any land in the combined site of special scientific interest).”
- (3) In section 48(11)(a) (notices etc.), after “5(1)” insert “, 5A(1)”.
- (4) In section 58(1) (interpretation)—
  - (a) in the definition of “site of special scientific interest”, after “3(6)” insert “(read, where necessary, together with section 5A(3)(b))”,
  - (b) in the definition of “SSSI notification”, after “3(5)” insert “(read, where necessary, together with section 5A(3)(a))”.

### **38 Denotification of SSSIs: damage caused by authorised operations**

In section 9 (denotification of SSSIs) of the 2004 Act, after subsection (4) insert—

- “(5) This subsection applies where—
  - (a) a public body or office-holder (after consulting SNH in accordance with any enactment) permits the carrying out of an operation,
  - (b) the carrying out of the operation in pursuance of that permission damages a natural feature specified in an SSSI notification,
  - (c) SNH, because of that damage, gives notification under subsection (1) of its intention to revoke or modify the SSSI notification, and
  - (d) the explanation given by virtue of subsection (4)(a)(ii) in the document accompanying the notification under subsection (1)—
    - (i) states that SNH considers that all or part of the site of special scientific interest is no longer of special interest by reason of the damage caused by the carrying out of the permitted operation, and
    - (ii) explains the effect of subsection (6)(b).
- (6) Where subsection (5) applies—
  - (a) section 11, and paragraphs 3 to 15 of schedule 1, do not apply in relation to the notification under subsection (1), and

- (b) the relevant SSSI notification is revoked or, as the case may be, modified when the notification is given under subsection (1).”.

**39 SSSIs: operations requiring consent**

- (1) The 2004 Act is amended as follows.
- (2) In section 13(1) (SNH consent required for operations carried out by public bodies), after “out” insert “, or cause or permit to be carried out on land owned or occupied by the public body or office-holder,”.
- (3) In section 14 (SNH consent not required for certain operations)—
- (a) in subsection (1)—
- (i) after paragraph (c) insert—
- “(ca) in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996 (c.58),”,
- (ii) the word “or” immediately following paragraph (d) is repealed,
- (iii) after paragraph (e) insert “, or
- (f) if that operation is of a type described by order made by the Scottish Ministers.”,
- (b) in subsection (2), after second “out” insert “or cause or permit to be carried out”,
- (c) in subsection (3)—
- (i) in paragraph (a)(i), for “proposes to commence the operation” substitute “is proposed that the operation be commenced”,
- (ii) in paragraph (b), after “way” insert “, or causes or permits the operation to be carried out only in such a way,”,
- (iii) in paragraph (c), after “operation” insert “or, as the case may be, in causing or permitting the carrying out of the operation,”,
- (d) in subsection (4)(a), for “an operation for” substitute “or causes or permits the carrying out of an operation in circumstances in”.
- (4) In section 17 (SNH consent not required for certain operations)—
- (a) in subsection (1)—
- (i) after paragraph (c) insert—
- “(ca) in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996 (c.58),”,
- (ii) the word “or” immediately following paragraph (d) is repealed,
- (iii) after paragraph (e) insert “, or
- (f) if that operation is of a type described by order made by the Scottish Ministers.”,
- (b) in subsection (4), for the words from “owner” to “functions” substitute “operation in respect of which section 13 applies.”.

**40 SSSI offences: civil enforcement**

(1) The 2004 Act is amended as follows—

(a) after section 20 insert—

*“Restoration notices*

**20A Restoration notices**

- (1) SNH may propose to give a restoration notice where it is satisfied that a person (the “responsible person”)—
  - (a) has committed an offence under section 19(1), or
  - (b) has committed an offence under section 19(3) in respect of an operation which has damaged a natural feature specified in an SSSI notification.
- (2) A restoration notice is a notice which requires the responsible person to carry out such operations as may be specified in the notice, within such periods from the notice taking effect as may be so specified, for the purpose of restoring, so far as is reasonably practicable, the damaged natural feature to its former condition.
- (3) A proposal under subsection (1) must be made to the responsible person and must—
  - (a) explain why SNH proposes to give the restoration notice,
  - (b) be accompanied by a draft of the proposed restoration notice,
  - (c) explain that giving notice of intention to comply with the restoration notice within 28 days of it being given would discharge the responsible person from liability to conviction for the offence in question,
  - (d) explain that the responsible person has the right to make representations to SNH about the proposal within the period of 28 days from the date on which the proposal is made,
  - (e) specify the manner in which such representations must be made.
- (4) SNH may, after the period for making representations about a proposal has expired, give the restoration notice (with or without modifications) to the responsible person.
- (5) A restoration notice has effect only if the responsible person gives SNH notice of intention to comply with it within 28 days of it being given.
- (6) SNH may by giving notice to a responsible person in respect of whom a restoration notice has effect—
  - (a) extend the period specified in the restoration notice within which operations are to be carried out, or
  - (b) otherwise modify the restoration notice in such manner as SNH considers appropriate.
- (7) A notice may be given under paragraph (b) of subsection (6) only where the responsible person has consented to the modification.
- (8) SNH may withdraw a restoration notice (by giving notice to the responsible person) where it is satisfied on the basis of information subsequently obtained that the restoration notice should not have been given to the responsible person.

- (9) Where a restoration notice is withdrawn, SNH must compensate the responsible person for any expenses reasonably incurred in complying with the restoration notice.
- (10) Proceedings against the responsible person may not be commenced or continued for an offence in relation to which the restoration notice has effect (even if the restoration notice is subsequently withdrawn).
- (11) If, within the period specified in a restoration notice, the responsible person to whom it is given fails, without reasonable excuse, to comply with it, the responsible person is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding £40,000,
  - (b) on conviction on indictment, to a fine.
- (12) If, within the period specified in a restoration notice, any operations so specified have not been carried out in accordance with the restoration notice, SNH may—
  - (a) carry out those operations, and
  - (b) recover from the responsible person any expenses reasonably incurred by it in doing so.”
- (b) in section 14(1) (SNH consent not required for certain operations by public bodies), after paragraph (a) insert—

“(aa) in accordance with a restoration notice given under section 20A(4) or a restoration order made under section 40(1),”
- (c) in section 17(1) (SNH consent not required for certain operations by owners or occupiers), after paragraph (a) insert—

“(aa) in accordance with a restoration notice given under section 20A(4) or a restoration order made under section 40(1),”
- (d) in section 44(1) (powers of entry), after paragraph (b) insert—

“(ba) to ascertain whether an operation required to be carried out by a restoration notice given under section 20A(4) has been carried out in accordance with the notice,

“(bb) to carry out operations in pursuance of section 20A(12),”
- (e) in paragraph 1(1)(b) (duty to give notice before entering occupied premises) of schedule 4, for “(1)(h)” substitute “(1)(bb), (h)”.
- (2) In section 8B(1) (protection afforded to spent alternatives) of the Rehabilitation of Offenders Act 1974 (c.53), after paragraph (c) insert—

“(ca) has, under subsection (5) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6), given notice of intention to comply with a restoration notice given under subsection (4) of that section,”.
- (3) The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows—
  - (a) in section 69(7) (notice of previous alternative disposals), after paragraph (b) insert “;

- (c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”,
- (b) in section 101 (previous convictions)—
  - (i) in subsection (10), after paragraph (b) insert “;
    - (c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”,
  - (ii) in subsection (11)—
    - (A) the word “or” immediately following paragraph (b) is repealed,
    - (B) after paragraph (c) insert “; or
    - (d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related,”,
    - (C) at the end of the subsection insert “or, as the case may be, about the giving of the notice (including the terms of the notice).”,
- (c) in section 166 (previous convictions: summary proceedings)—
  - (i) in subsection (10), after paragraph (b) insert “;
    - (c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.”,
  - (ii) in subsection (11)—
    - (A) the word “or” immediately following paragraph (b) is repealed,
    - (B) after paragraph (c) insert “; or
    - (d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related,”,
    - (C) at the end of the subsection insert “or, as the case may be, about the giving of the notice (including the terms of the notice).”.

## PART 7

### GENERAL

#### 41 Crown application

- (1) The modifications of enactments made by this Act bind the Crown to the extent the enactments bind the Crown.
- (2) After section 27 of the 1946 Act, insert—

**“27A Crown application: sections 23 to 27**

- (1) Sections 23 to 27 (including orders made under section 23B) of this Act bind the Crown.

- (2) No contravention by the Crown of any provision made by or under sections 23 to 27 of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing those provisions, declare unlawful any act or omission of the Crown which constitutes such a contravention.
  - (3) Despite subsection (2), sections 23 to 27 (including orders made under section 23B) apply to persons in the public service of the Crown as they apply to other persons.”.
- (3) After section 66A of the 1981 Act, insert—
- “66B Application of Part 1 to Crown: Scotland**
- (1) Subject to subsections (2) to (5), Part 1 (including regulations and orders made under it) bind the Crown.
  - (2) No contravention by the Crown of any provision made by or under Part 1 makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
  - (3) Despite subsection (2), any provision made by or under Part 1 applies to persons in the public service of the Crown as it applies to other persons.
  - (4) A species control order may be made under section 14D in relation to Crown land only with the consent of the appropriate authority.
  - (5) The powers conferred by sections 14M and 19ZC are exercisable in relation to Crown land only with the consent of the appropriate authority.
  - (6) In this section, “Crown land” means an interest in land which—
    - (a) belongs to Her Majesty in right of the Crown;
    - (b) belongs to Her Majesty in right of Her private estates;
    - (c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or
    - (d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.
  - (7) In this section, the “appropriate authority”—
    - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
    - (b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;
    - (c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;



- (d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;
  - (e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.
- (8) The references in subsections (6)(b) and (7)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).
  - (9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.
- (4) After section 13 of the 1992 Act, insert—
- “13A Crown application: Scotland**
- (1) This Act binds the Crown.
  - (2) No contravention by the Crown of any provision of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
  - (3) Despite subsection (2), this Act applies to persons in the public service of the Crown as it applies to other persons.”.
- (5) In section 44 of the 1996 Act—
- (a) for subsection (1), substitute—
    - “(1) This Act binds the Crown, subject to such modifications as may be prescribed.”,
  - (b) after subsection (2), insert—
    - “(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
    - (4) Despite subsection (3), this Act applies to persons in the public service of the Crown as it applies to other persons.
    - (5) The power conferred by section 15 of this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.
    - (6) In subsection (5), “Crown land” means an interest in land which—
      - (a) belongs to Her Majesty in right of the Crown;
      - (b) belongs to Her Majesty in right of Her private estates;
      - (c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or
      - (d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.

- (7) In subsection (5), the “appropriate authority”—
- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
  - (b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;
  - (c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;
  - (d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;
  - (e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.
- (8) The references in subsections (6)(b) and (7)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).
- (9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

#### **42 Ancillary provision**

- (1) The Scottish Ministers may by order made by statutory instrument make such incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may modify any enactment.
- (3) A statutory instrument containing an order under subsection (1) is (except where subsection (4) applies) subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

#### **43 Commencement and short title**

- (1) The provisions of this Act (other than section 1, section 42 and this section) come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) An order under subsection (1) may—
  - (a) make different provision for different purposes,
  - (b) make such transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

- (3) This Act may be cited as the Wildlife and Natural Environment (Scotland) Act 2011.

SCHEDULE  
*(introduced by section 25)*

MODIFICATIONS AND REPEALS RELATING TO PART 2 AND GAME LICENSING

**PART 1**

MODIFICATIONS

1 In section 39(2) of the Agriculture (Scotland) Act 1948 (c.45), in the proviso, for the words from “game” to the end substitute “—

- (a) black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge in the close season for that bird (within the meaning of section 2(4) of the Wildlife and Countryside Act 1981 (c.69)); or
- (b) brown hare or mountain hare in the close season for that hare (within the meaning of section 10A(2) of that Act);

and for the purposes of subsection (1) a person is not deemed not to have the right to comply with a requirement falling within this proviso by reason only that, apart from the proviso, compliance with the requirement would constitute an offence under section 1 or (as the case may be) 10A(1) of that Act.”.

**PART 2**

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
Game (Scotland) Act 1772 (c.54)	The whole Act.
Night Poaching Act 1828 (c.69)	The whole Act.
Game Act 1831 (c.32)	The provisions of the Act extended to Scotland by section 13 of the Game Licences Act 1860 (c.90).
Game (Scotland) Act 1832 (c.68)	The whole Act.
Night Poaching Act 1844 (c.29)	The whole Act.
Hares (Scotland) Act 1848 (c.30)	The whole Act.
Game Licences Act 1860 (c.90)	The whole Act.
Poaching Prevention Act 1862 (c.114)	The whole Act.
Game Laws Amendment (Scotland) Act 1877 (c.28)	The whole Act.
Ground Game Act 1880 (c.47)	Section 4.
Customs and Inland Revenue Act 1883 (c.10)	The whole Act.

<i>Enactment</i>	<i>Extent of repeal</i>
Hares Preservation Act 1892 (c.8)	The whole Act.
Finance Act 1924 (c.21)	The whole Act.
Destructive Imported Animals Act 1932 (c.12)	The whole Act.
Finance Act 1937 (c.54)	Section 5. Second Schedule.
Agriculture (Scotland) Act 1948 (c.45)	Section 53.
Local Government (Scotland) Act 1966 (c.51)	Section 44. In Schedule 4, Part II, the entries relating to the Game Licences Act 1860 and the Customs and Inland Revenue Act 1883.
Game Act 1970 (c.13)	The whole Act.
Import of Live Fish (Scotland) Act 1978 (c.35)	The whole Act.
Deer (Scotland) Act 1996 (c.58)	Section 38.
Protection of Wild Mammals (Scotland) Act 2002 (asp 6)	In the schedule, paragraphs 1 and 2.
Marine (Scotland) Act 2010 (asp 5)	Section 104.