

2012 No. 175 (C. 16)

WILDLIFE

**The Wildlife and Natural Environment (Scotland) Act 2011
(Commencement No. 4, Savings and Transitional Provisions)
Order 2012**

<i>Made</i>	- - - -	<i>30th May 2012</i>
<i>Laid before the Scottish Parliament</i>		<i>31st May 2012</i>
<i>Coming into force</i>	- -	<i>2nd July 2012</i>

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

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No. 4, Savings and Transitional Provisions) Order 2012 and comes into force on 2nd July 2012.

(2) In this Order—

“the 1932 Act” means the Destructive Imported Animals Act 1932(b);

“the 1978 Act” means the Imports of Live Fish (Scotland) Act 1978(c);

“the 1981 Act” means the Wildlife and Countryside Act 1981(d); and

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

Appointed days

2.—(1) 2nd July 2012 is the day appointed for the coming into force of the following provisions of the 2011 Act—

(a) section 14 (non-native species etc.) so far as not already in force;

(b) section 16 (species control orders etc.);

(c) section 17 (non-native species etc.: further provision) so far as not already in force;

(d) section 22 (wildlife inspectors etc.); and

(a) 2011 asp 6.
(b) 1932 c.12.
(c) 1978 c.35.
(d) 1981 c.69.

- (e) section 25 (modifications and repeals relating to Part 2 and game licensing) in respect of the fourteenth, nineteenth, twentieth and twenty first entry in Part 2 of the Schedule.

Savings and transitional provisions

3.—(1) Despite the repeal of sections 3 (grant and revocation of licences) and 8 (saving in respect of animals kept for exhibition etc.) of the 1932 Act by section 25 of, and Part 2 of the Schedule to, the 2011 Act, a licence granted under the repealed sections—

- (a) remains in effect;
- (b) is subject to such conditions as are applied by an enactment listed in Schedule 2 to the Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Order 2012(a), despite the revocation of those enactments by that Order; and
- (c) is deemed to be a licence granted under section 16(4) of the 1981 Act disapplying a prohibition in or under section 14ZC of that Act.

(2) Despite the repeal of section 1 (power to limit the import etc. of fish and fish eggs) of the 1978 Act by section 25 of, and Part 2 of the Schedule to, the 2011 Act, a licence granted under the repealed section—

- (a) remains in effect; and
- (b) is deemed to be a licence granted under section 16(4) of the 1981 Act disapplying a prohibition in or under section 14 or 14ZC of that Act.

(3) Despite the substitution of section 14(1) to (2) of the 1981 Act by section 14(2)(a) of the 2011 Act, a licence granted under section 16(4) of the 1981 Act disapplying a prohibition in section 14(1) to (2) of that Act (prior to amendment by the 2011 Act)—

- (a) remains in effect; and
- (b) is deemed to be a licence granted under section 16(4) of the 1981 Act disapplying a prohibition in or under section 14 of that Act (as amended).

(4) An application for a licence under—

- (a) section 3 or 8 of the 1932 Act;
- (b) section 1 of the 1978 Act; or
- (c) section 16(4) of the 1981 Act in respect of section 14(1) to (2) of that Act (prior to amendment by the 2011 Act),

so far as it relates to a matter prohibited by or under section 14 or 14ZC of the 1981 Act is, if not determined by the appointed day, to be treated as an application for a licence under section 16(4) of the 1981 Act (as amended).

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
30th May 2012

(a) S.S.I. 2012/174.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order commences provisions of the Wildlife and Natural Environment (Scotland) Act 2011 (“the 2011 Act”), so far as not already in force.

Article 2 brings the following provisions of the 2011 Act into force on 2nd July 2012—

- (a) section 14 so far as not already in force, which—
 - (i) amends section 14 (introduction of new species etc.) of the 1981 Act in relation to the offence of releasing an animal, allowing an animal to escape from captivity and causing an animal to be at a place outwith its native range and the offence of planting, or causing to grow, any plant in the wild at a place outwith its native range;
 - (ii) inserts new section 14ZC into the 1981 Act which makes provision restricting the keeping of invasive animals and plants;
 - (iii) amends section 14A (prohibition on sale etc. of certain animals or plants) of the 1981 Act by amending the powers of the Scottish Ministers to make orders to make them exercisable in respect of invasive animals or plants; and
 - (iv) inserts new section 14B into the 1981 Act which enables the Scottish Ministers to require by order certain persons to notify the presence of an invasive animal or plant at a place outwith the native range of the animal or plant;
- (b) section 16 which inserts sections 14D to 14P into the 1981 Act relating to species control orders and in particular who can make them, their content, appeals, review, offences in relation to species control orders, enforcement of operations under species control orders and powers of entry;
- (c) section 17 so far as not already in force, which makes further amendments to the 1981 Act in relation to non-native species etc. and provides—
 - (i) that the keeping measures in new section 14ZC of the 1981 Act do not apply to anything done under and in accordance with a licence granted by the Scottish Ministers under section 16 of the 1981 Act;
 - (ii) penalties on conviction for a keeping, notification or species control order offence;
 - (iii) for the repeal of references to Schedule 9 to the 1981 Act and the repeal of Schedule 9 itself;
 - (iv) for Scottish Natural Heritage to advise or assist any other relevant body carrying out operations under a species control order, or a person authorised to enter premises in connection with an order;
 - (v) that the making of a release, keeping, sale or notification order by the Scottish Ministers can be annulled by the Scottish Parliament; and
 - (vi) that notice of a species control order under section 14G cannot be served by electronic means and that the general rule in the 1981 Act for service of notice on persons who cannot be identified do not apply to notice of a species control order under section 14D;
- (d) section 22 which makes amendments to the 1981 Act in relation to wildlife inspectors so that wildlife inspectors appointed by the Scottish Ministers under section 19ZC of the 1981 Act are authorised to take enforcement action in respect of the new offences created by the 1981 Act (as inserted by the 2011 Act); and
- (e) section 25 and Part 2 of the schedule to the Act in respect of the repeal of the Destructive Imported Animals Act 1932 (“the 1932 Act”), the Import of Live Fish (Scotland) Act 1978 (“the 1978 Act”), section 38 of the Deer (Scotland) Act 1996 and paragraphs 1 and 2 of the schedule to the Protection of Wild Mammals (Scotland) Act 2002.

Article 3 makes saving and transitional provisions in respect of licences authorising the keeping or release of animals, or the planting of plants, under the 1932 Act and the 1978 Act, and under section 14(1) to (2) of the 1981 Act as it applied before the appointed day. The effect of article

3(1), (2) and (3) is that any licence granted under the law in force prior to the appointed day, remains in effect and is deemed to be a licence granted under section 16(4) of the 1981 Act, as amended. Article 3(4) makes transitional provision in relation to any application for a licence which is not determined by 2 July 2012. Such an application under section 16(4) of the 1981 Act, as amended.

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

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 14, in part	1st May 2012	S.S.I. 2012/116
Section 17, in part	1st May 2012	S.S.I. 2012/116

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 4	1st January 2012	S.S.I. 2011/433(a)
Section 6	1st January 2012	S.S.I. 2011/433
Section 8	1st January 2012	S.S.I. 2011/433
Section 9	1st January 2012	S.S.I. 2011/433
Section 11	1st January 2012	S.S.I. 2011/433
Section 12	1st January 2012	S.S.I. 2011/433
Section 13, in part	1st January 2012	S.S.I. 2011/433
Section 15	1st January 2012	S.S.I. 2011/433
Section 21	1st January 2012	S.S.I. 2011/433
Section 23	1st January 2012	S.S.I. 2011/433
Section 24	1st January 2012	S.S.I. 2011/433
Section 26	1st January 2012	S.S.I. 2011/433
Section 27	1st January 2012	S.S.I. 2011/433
Section 28	1st January 2012	S.S.I. 2011/433
Section 30	1st January 2012	S.S.I. 2011/433
Section 31	1st January 2012	S.S.I. 2011/433
Section 32	1st January 2012	S.S.I. 2011/433
Section 35	1st January 2012	S.S.I. 2011/433
Section 36	1st January 2012	S.S.I. 2011/433
Section 41	1st January 2012	S.S.I. 2011/433
Section 20	2nd January 2012	S.S.I. 2011/433
Section 29	1st April 2012	S.S.I. 2011/433
Section 13	1st January 2013	S.S.I. 2011/433

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 2	29th June 2011	2011/279(b)
Section 3	29th June 2011	2011/279
Section 5	29th June 2011	2011/279
Section 6(2) and (5), in part	29th June 2011	2011/279
Section 7	29th June 2011	2011/279
Section 8, in part	29th June 2011	2011/279
Section 9, in part	29th June 2011	2011/279
Section 10	29th June 2011	2011/279
Section 12, in part	29th June 2011	2011/279
Section 18	29th June 2011	2011/279
Section 19	29th June 2011	2011/279
Section 25, in part	29th June 2011	2011/279
Section 33	29th June 2011	2011/279

(a) As amended by S.S.I. 2011/437.

(b) As amended by S.S.I. 2011/287.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 37	29th June 2011	2011/279
Section 38	29th June 2011	2011/279
Section 39	29th June 2011	2011/279
Section 40	29th June 2011	2011/279
Section 34	1st August 2011	2011/279

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