

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – BACKGROUND AND OVERVIEW

3. The Act makes a range of provision about wildlife and the natural environment. It consists of six Parts and a schedule, which make provision as explained below.
4. The following expressions are used throughout these Notes:
 - “the 1946 Act” means the Hill Farming Act 1946,
 - “the 1981 Act” means the Wildlife and Countryside Act 1981,
 - “the 1992 Act” means the Protection of Badgers Act 1992,
 - “the 1996 Act” means the Deer (Scotland) Act 1996,
 - “the 2004 Act” means the Nature Conservation (Scotland) Act 2004, and
 - “SNH” means Scottish Natural Heritage, established under the Natural Heritage (Scotland) Act 1991.

Part 1 – Defined expressions

5. **Part 1** contains defined expressions for the statutes amended by the Act.

Part 2 – Wildlife under the 1981 Act

6. Part 2 of the Act makes amendments to Part 1 (Wildlife) of the Wildlife and Countryside Act 1981.
7. Part 1 of the 1981 Act regulates the taking, killing, sale and possession of all wild birds and of the wild animal and plant species which are specified in Schedules to that Act. Certain other species of wild animals and plants are protected separately under the [Conservation \(Natural Habitats & c.\) Regulations 1994 \(S.I.1994/2716\)](#). Part 1 of the 1981 Act also prohibits certain methods of taking and killing birds and animals and regulates the use of other methods (including snares). It also regulates the introduction of non-native species. Most activities prohibited under Part 1 of the 1981 Act are capable of being licensed for certain purposes under section 16 of that Act.
8. The amendments in the Act:
 - protect game species under the 1981 Act (which includes provision for close seasons and “poaching” offences),
 - abolish “areas of special protection” for wild birds,
 - provide further for the use of snares to catch animals,
 - extend the regime for controlling non-native and invasive species,

*These notes relate to the Wildlife and Natural Environment (Scotland)
Act 2011 (asp 6) which received Royal Assent on 7 April 2011*

- amend licensing functions under the Act, and enable the delegation of those functions,
- provide for new wildlife offences, including for vicarious criminal liability for certain offences,
- provides for offences by Scottish partnerships and unincorporated associations,
- provide for Part 1 of the 1981 Act to apply to the Crown, and
- extend the powers of wildlife inspectors.

Part 3 – Deer

9. **Part 3** of the Act amends the Deer (Scotland) Act 1996.
10. Part I (sections 1 to 4) of the 1996 Act places a duty on SNH to further the conservation, control and sustainable management of deer. Part II of the 1996 Act (sections 5 to 16) provides for the setting of close seasons and creates mechanisms for SNH to work with landowners to manage deer numbers. Part III (sections 17 to 26) of the 1996 Act creates offences in relation to deer, including poaching offences which make it an offence to kill deer without the legal right to do so. Part IV (sections 27 to 48) of the 1996 Act regulates venison dealing and contains enforcement and other miscellaneous provisions.
11. The Act amends the 1996 Act to change the provisions which allow certain occupiers of land to shoot deer during close seasons. It requires SNH to prepare a code of practice in relation to deer management. It revises the purposes for, and the circumstances in which, SNH can exercise powers in relation to control agreements, control schemes and emergency measures to manage deer. It enables Ministers to make provision by order to require persons who shoot deer to be registered as competent to do so. Such orders may also be used to set out requirements for collecting data about numbers of deer killed (described in the Act as “cull returns”) extending further than any requirement under section 40 of the 1996 Act. It provides for offences by Scottish partnerships under the 1996 Act. It modifies the application of the 1996 Act to the Crown.

Part 4 – Other wildlife etc.

12. **Section 33** of the Act amends the Protection of Badgers Act 1992.
13. The 1992 Act prohibits a range of activities in relation to badgers, including the killing, taking and sale of badgers, and disturbance to their setts. Some of these activities can be licensed for certain purposes. The Act creates a number of new offences under the 1992 Act and provides for certain offences to be triable on indictment as well as under summary procedure. It makes provision for the delegation of licensing functions under the 1992 Act. It provides for the 1992 Act to apply to the Crown.
14. **Sections 34** and **35** of the Act amend the Hill Farming Act 1946.
15. Sections 23 to 27 of the 1946 Act regulate the practice of muirburn in Scotland, which is defined in section 39 of that Act as including “setting fire to or burning heath or muir”. The Act replaces periods during which muirburn is prohibited with a positive season during which it is permitted. It also expands the power to amend muirburn seasons by order, and provides a power to make regulations during an extended season. It provides for a new licensing regime in respect of out of season muirburn. It reforms requirements to inform neighbours of intentions to make muirburn. It provides for offences by bodies corporate, Scottish partnerships and others under the 1946 Act. It provides for sections 23 to 27 of the 1946 Act to apply to the Crown.

Part 5 – Biodiversity

16. **Part 5** of the Act amends the Nature Conservation (Scotland) Act 2004 Act to provide for public bodies subject to the biodiversity duty under section 1 of the 2004 Act to prepare and publish reports on compliance with that duty.

Part 6 – Sites of special scientific interest

17. **Part 6** of the Act amends the 2004 Act to make provision for the combination and denotification of sites of special scientific interest (“SSSI”), operations which affect a SSSI, and an alternative procedure for securing restoration of SSSI features following illegal damage.

Part 7 – General

18. **Part 7** of the Act contains general provision on Crown application (as set out above) and commencement.

Schedule

19. Part 1 of the schedule modifies section 39 of the Agriculture (Scotland) Act 1948 as a consequence of the changes made by the Act in respect of the protection of game.
20. **Part 2** of the schedule contains repeals. These include the repeals of the 18th and 19th century statutes known as the Game Acts, which set close seasons for game birds, create poaching offences (killing or taking game), and establish requirements for game licences. The game licensing regime is repealed and not replaced, although it will be possible to grant licences in relation to game species for other purposes under the 1981 Act.