

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 12 – Miscellaneous and General

Miscellaneous

Section 77, schedule 3 and that part of schedule 5 relating to the Wildlife and Countryside Act 1981: Wildlife Offences

427. **Section 77** introduces schedule 3. Schedule 3 makes changes to the existing provisions of the Wildlife and Countryside Act 1981 (“the 1981 Act”). These changes provide for the upgrading of the penalties for wildlife offences under Part I of that Act; for the introduction of a general power of arrest in the case of such wildlife offences; for a standardisation of the period within which such offences may be prosecuted; and for related changes to the 1981 Act. Schedule 5 provides for the repeal of elements within the 1981 Act in the light of the substantive changes effected by schedule 3.
428. **Schedule 3 Paragraph 2** substitutes text in sections 6(8) and 7(3) of the 1981 Act. This substitution has the effect of standardising, at five years, the length of the prohibition which applies to certain activities (dealing in dead birds and keeping or possessing certain species of bird) following conviction for a range of relevant offences. These include offences (under any enactment) which involve the ill-treatment of birds or other animals, as well as specified offences under the 1981 Act.
429. **Paragraph 3** amends section 7(4) of the 1981 Act to reflect the fact that the prohibition provided for in section 7(3) has been standardised at five years.
430. **Paragraph 4** provides, in sub-paragraph (a), for a general power of arrest in relation to offences under Part I of the 1981 Act, by repealing part of the existing text of section 19(1)(c) of that Act. In sub-paragraph (b), the current provisions of Section 19(3) of the 1981 Act, relating to search warrants, are extended to enable search warrants to be issued for any offence under Part I of that Act.
431. **Paragraph 5** extends the provisions of the 1981 Act regulating the prosecution of wildlife offences. As a result of the changes made in this paragraph, proceedings may be brought, in relation to all offences under Part I of the 1981 Act, within six months of sufficient evidence coming to the knowledge of the prosecutor.
432. **Paragraph 6** provides for increased penalties in wildlife crime cases. It also regularises the tariff of maximum penalties for the majority of wildlife offences. These changes are achieved, via sub-paragraphs (a) and (b), by replacing the existing subsections (1), (2) and (3) in section 21 of the 1981 Act with a single, new subsection. The changes apply to all Part I offences, with the exception of those under section 14 of the 1981 Act, which are tackled separately in sub-paragraph (c). The change in sub-paragraph (d) follows from sub-paragraph (b) and removes a redundant reference to the repealed subsections (2) and (3).

*These notes relate to the Criminal Justice (Scotland) Act
2003 (asp 7) which received Royal Assent on 26 March 2003*

433. The change effected by sub-paragraph (a) allows for custodial sentences of up to 6 months to be imposed following summary conviction for the listed Part I offences. The maximum fine is also standardised at Level 5 on the standard scale. As a consequence, all offences tried summarily will in future be subject to the same maxima and there will no longer be provision for special penalties in connection with bird-related offences.
434. Sub-paragraph (c) deals separately with the particular case of offences under section 14 of the 1981 Act. Section 14 prohibits the release of non-native species and a number of particularly damaging plants and animals which are listed in schedule 9 to the 1981 Act. Where a section 14 offence is tried summarily, the maximum penalty will be the same as for other Part I offences - a 6 month custodial sentence, a fine up to the statutory maximum, or both. In more serious cases, where a section 14 offence is tried on indictment, the courts currently have the option to impose an unlimited fine. That option is retained but the option of a custodial sentence of up to 2 years is also provided.