

SCHEDULE 1

(introduced by section 10)

NOTIFICATIONS RELATING TO SITES OF SPECIAL SCIENTIFIC INTEREST: PROCEDURE

Application of schedule

- 1 This schedule applies to notifications given under sections 3(1), 5(1) and 9(1).

Publication

- 2 SNH must give notice describing the general effect of a notification to which this schedule applies—
- (a) in at least one local newspaper circulating in the area in which the land to which the notification relates is situated, and
 - (b) in such other manner (including on the internet or by other electronic means) as SNH thinks fit.

Content of notification

- 3 A notification to which this schedule applies and the related notice under paragraph 2 must—
- (a) name a place where a copy of the notification and each document and map which, by virtue of section 3(4) or 9(4), accompanies it may be inspected free of charge at all reasonable hours,
 - (b) provide details of how to obtain, on payment of such reasonable charge (if any) as may be imposed by SNH, a copy of the notification or any such document or map, and
 - (c) specify the period (not being less than 3 months from the date on which the notification is given) during which, and the manner in which, representations with respect to the notification may be made.

Confirmation or withdrawal of notification

- 4 SNH must, within—
- (a) the period of one year beginning with the date on which a notification to which this schedule applies was given, or
 - (b) if that period is extended under paragraph 12, the period as so extended,
- after considering any representations made within the period specified in the notification, decide to confirm or withdraw the notification.
- 5 If SNH does not give notice under paragraph 10 within the period mentioned in paragraph 4(a) or that period as extended, it is to be treated as having withdrawn the notification and as having given notice of that fact on the day on which the period expired.

Modification of notification

- 6 SNH may confirm a notification to which this schedule applies with or without modifications; and the notice under paragraph 10 must specify the modifications (if any) which it has made.
- 7 Such modifications must not have the effect of—

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(a) adding to the operations requiring consent specified in an SSSI notification,
or

(b) extending the area of a site of special scientific interest.

8 Paragraph 7(a) does not prevent SNH from amending an SSSI notification by notification under section 7(3) before it gives notice under paragraph 10 in relation to the SSSI notification.

Referral to Advisory Committee

9 Where—

(a) SNH has received a representation made within the period specified in the notification by virtue of paragraph 3(c), and

(b) it is required by subsection (8) of section 21 to refer the matter to the Advisory Committee,

SNH must not confirm the notification unless it has complied with paragraphs (a) and (b) of that subsection.

Notice of decision to confirm or withdraw

10 SNH must, as soon as practicable after making a decision under paragraph 4 give notice of it—

(a) to the interested parties, and

(b) in accordance with paragraph 2(a) and (b).

11 Where a notice is given under paragraph 10(a) to a person who has made a representation in a case where the matter was referred to the Advisory Committee in pursuance of section 21(8), the notice must be accompanied by a copy of any advice given by the Advisory Committee in that regard.

Extension of period during which notification is to be confirmed or withdrawn

12 SNH may extend or further extend the period mentioned in paragraph 4(a) by such period—

(a) in a case where a matter has been referred to the Advisory Committee, as it thinks fit,

(b) in any other case, as may be agreed with every owner and occupier of land within the site of special scientific interest.

13 The period mentioned in paragraph 4(a) may not be extended under paragraph 12(a) beyond the date which is 18 months after the date on which a notification to which this schedule applies was given.

14 Agreement is obtained for the purposes of paragraph 12(b) if SNH, not less than 28 days before the expiry of the period to be extended or further extended, gives notice of the proposed extension or further extension to every owner and occupier of land within the site of special scientific interest and—

(a) every such person consents to the extension, or

(b) no reasonable objection by any such person to the extension is received by SNH within 28 days of the date on which the notice was given.

15 Where SNH extends or further extends the period mentioned in paragraph 4(a) it must give notice of the extension, or further extension, to the interested parties.

SCHEDULE 2

(introduced by section 25)

NATURE CONSERVATION ORDERS AND RELATED ORDERS: PROCEDURE

Application of schedule

- 1 This schedule applies to nature conservation orders, amending orders and revoking orders.

Consultation

- 2 Before making an order to which this schedule applies the Scottish Ministers must—
- (a) consult SNH on the proposed order, and
 - (b) have regard to any representations made by SNH.

Notification

- 3 The Scottish Ministers must, as soon as practicable after making an order to which this schedule applies, give notice of it—
- (a) to the interested parties,
 - (b) in at least one local newspaper circulating in the area in which the land to which the order relates is situated, and
 - (c) in such other manner (including on the internet or by other electronic means) as they think fit.
- 4 The notice must—
- (a) set out the order or describe its general effect and, in either case, state whether it has taken effect,
 - (b) where the notice does not set out the order—
 - (i) name a place where a copy of it may be inspected free of charge at all reasonable hours, and
 - (ii) provide details of how to obtain, on payment of such reasonable charge (if any) as may be imposed by the Scottish Ministers, a copy of it, and
 - (c) where the notice is given in respect of a nature conservation order or an amending order, specify the period (not being less than 3 months from the date on which the notice is given) during which, and the manner in which, representations with respect to the order may be made.

Confirmation of nature conservation orders and amending orders

- 5 The Scottish Ministers must, within—
- (a) the period of one year beginning with the date on which a nature conservation order or amending order is made, or
 - (b) if that period is extended under paragraph 12, the period as so extended,
- after considering any representations made within the period specified in the notice and the report of any person appointed under paragraph 10 to hold an inquiry or to hear representations, decide either to confirm or not to confirm the order.

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- 6 The Scottish Ministers may confirm the order with or without modifications; and the notice given under paragraph 8 of the decision to confirm must specify the modifications (if any) which they have made.
- 7 Such modifications must not extend the area of land to which a nature conservation order relates.
- 8 The Scottish Ministers must, as soon as practicable after making a decision under paragraph 5, give notice of it in accordance with paragraph 3(a) to (c).
- 9 An order which is confirmed with modifications has effect, from the giving of notice under paragraph 8 of the decision to confirm, in its modified form.

Inquiry or other opportunity to be heard

- 10 If any representation made during the period specified in the notice is not withdrawn during the period mentioned in paragraph 5(a), or that period as extended, the Scottish Ministers must—
- (a) cause a local inquiry to be held, or
 - (b) give the person who made the representation an opportunity of being heard by a person appointed by the Scottish Ministers for the purpose.
- 11 Subsections (4) to (8) (which relate to the giving of evidence at, and defraying the cost of, local inquiries) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) apply in relation to any inquiry held under paragraph 10(a) as they apply in relation to a local inquiry which is caused to be held under subsection (1) of that section.

Extension of period

- 12 The Scottish Ministers may, with the agreement (obtained in accordance with paragraph 13) of every owner and occupier of land to which the order relates, extend or further extend the period mentioned in paragraph 5(a) by such period as may be agreed with those persons.
- 13 Agreement is obtained for the purposes of paragraph 12 if the Scottish Ministers, not less than 28 days before the expiry of the period to be extended or further extended, give notice of the proposed extension or further extension to every owner and occupier of land to which the order relates and—
- (a) every such person consents to the extension, or
 - (b) no reasonable objection by any such person to the extension is received by the Scottish Ministers within 28 days of the date on which the notice was given.
- 14 Where the Scottish Ministers extend or further extend the period mentioned in paragraph 5(a) they must give notice of the extension, or further extension, to the interested parties.

Recording or registration of orders

- 15 An order to which this schedule applies and a notice under paragraph 8 must be recorded in the General Register of Sasines or registered in the Land Register of Scotland as appropriate.

SCHEDULE 3

(introduced by section 33)

LAND MANAGEMENT ORDERS AND RELATED ORDERS: PROCEDURE

Notification of proposals for land management order

- 1 SNH must—
 - (a) give a copy of a proposal under section 29(2) for a land management order and the map accompanying it to every owner and occupier of land to which the proposal relates,
 - (b) give notice explaining the general effect of the proposed land management order to each of the other interested parties, and
 - (c) provide the Scottish Ministers with—
 - (i) the name and address of each of the interested parties, and
 - (ii) such other information as SNH thinks fit in relation to the proposal.
- 2 SNH must also arrange for notification of the proposal to be published—
 - (a) in at least one local newspaper circulating in the area in which the land to which the proposal relates is situated, and
 - (b) in such other manner (including on the internet or by other electronic means) as SNH thinks fit.
- 3 A notification under paragraph 1 or 2 must—
 - (a) name a place where a copy of the proposal and the map which accompanies it may be inspected free of charge at all reasonable hours,
 - (b) provide details of how to obtain, on payment of such reasonable charge (if any) as may be imposed by SNH, a copy of the proposal or map,
 - (c) specify the manner in which representations with respect to the proposal may be made to the Scottish Ministers.
- 4 Such representations may be made at any time—
 - (a) during the period of three months beginning on the date on which the notice under paragraph 1(b) is given, or
 - (b) if that period is extended under paragraph 5, during that period as extended.
- 5 The Scottish Ministers may, on the application of any person or of their own accord, extend the period mentioned in paragraph 4(a) by such further period of up to 3 months as they think fit by giving notice of the extension, at any time before the expiry of the period so mentioned, to the persons to whom a copy proposal or a notice was given under paragraph 1(a) or (b).

Power to require disclosure of information

- 6 The Scottish Ministers may give notice to—
 - (a) SNH, or
 - (b) any person to whom SNH has given a copy proposal or a notice under paragraph 1(a) or (b),requiring SNH or the person to provide the Scottish Ministers, at a time and place and in the form and manner specified in the notice, with such document or other information relating to the proposal as may be specified in the notice.

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- 7 Paragraph 6 does not authorise the Scottish Ministers to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
- 8 Any person who—
- (a) refuses or fails, without reasonable excuse, to do anything required of the person by a notice given under paragraph 6, or
 - (b) intentionally alters, suppresses or destroys a document containing any information which that person has been required by such a notice to produce,
- is guilty of an offence.
- 9 Any person guilty of an offence under paragraph 8 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Withdrawal of proposal

- 10 SNH may, at any time before the Scottish Ministers decide whether to make a land management order on a proposal under section 29(2), withdraw the proposal by giving notice to each person to whom it gave a copy proposal or a notice under paragraph 1(a) or (b).

Notification of decision on orders

- 11 The Scottish Ministers must publish a decision under section 30(1) or 32(3)—
- (a) in at least one local newspaper circulating in the area in which the land to which the order relates is situated, and
 - (b) in such other manner (including on the internet or by other electronic means) as they think fit.
- 12 The Scottish Ministers must also give notice of their decision to the interested parties.
- 13 Such a notice must specify—
- (a) the Scottish Ministers' reasons for making their decision,
 - (b) if they have decided to make a land management order other than in the manner proposed by SNH, the manner in which the order made differs from the order proposed,
 - (c) if they have decided to amend the order, the amendments to be made to the land management order, and
 - (d) the circumstances in which an appeal may be made under section 34(1) against their decision.

Recording or registration of orders

- 14 A land management order, and any order under section 32(3) amending or revoking a land management order, must be recorded in the General Register of Sasines or registered in the Land Register of Scotland as appropriate.

SCHEDULE 4

(introduced by section 44)

POWERS OF ENTRY OF AUTHORISED PERSONS: FURTHER PROVISION

Notice of entry to occupied land

- 1 (1) A person authorised under section 44 to enter any land may not demand admission as of right to any land which is occupied unless—
- (a) the entry is for the purpose mentioned in subsection (1)(f) of that section,
 - (b) the entry is for the purpose mentioned in subsection (1)(h) or (k) of that section and at least 14 days' notice of the intended entry has been given, or
 - (c) the entry is for any other purpose mentioned in subsection (1) or (2) of that section and at least 24 hours' notice of the intended entry has been given.
- (2) Any such notice must be given to the occupier and, where practicable, to the owner of the land.

Warrant for entry

- 2 (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 SNH or, as the case may be, the Scottish Ministers to enter any land (other than a dwelling or lockfast premises) for any of the purposes mentioned in section 44(1) and (2) and that—
- (a) admission to the land has been refused,
 - (b) such refusal is reasonably apprehended,
 - (c) the land is unoccupied,
 - (d) the occupier is temporarily absent from the land, or
 - (e) an application for admission to the land would defeat the object of the proposed entry,
- the sheriff or justice may grant a warrant authorising the person to enter the land, if necessary using reasonable force.
- (2) A sheriff or justice must not grant a warrant under sub-paragraph (1) by virtue only of being satisfied that a condition specified in sub-paragraph (1)(a) or (b) is fulfilled unless the sheriff or justice is satisfied that—
- (a) notice of the intended entry has been given in accordance with sub-paragraph (1)(b) or (c) of paragraph 1, or
 - (b) such notice is not, by virtue of sub-paragraph (1)(a) of that paragraph, required.
- (3) A warrant under this schedule 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.

Evidence of authority

- 3 A person authorised under section 44 or by a warrant granted under this schedule to enter any land must, if required to do so by the occupier or anyone acting on the occupier's behalf, produce evidence of the person's authority.

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Supplementary powers

- 4 (1) A person who enters any land in the exercise of any power conferred by section 44—
- (a) may—
 - (i) be accompanied by any other persons, and
 - (ii) take any machinery, other equipment or materials on to the land,
 for the purpose of assisting the person in the exercise of that power,
 - (b) take samples of any articles or substances found there and remove the samples from the land.
- (2) A power specified in sub-paragraph (1)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.

Duty to secure land

- 5 A person leaving any land which has been entered in exercise of a power conferred by section 44, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the person found it.

Compensation

- 6 (1) SNH or, as the case may be, the Scottish Ministers must compensate any person who has sustained damage by reason of—
- (a) the exercise by a person authorised by SNH or, as the case may be, the Scottish Ministers of any powers conferred on the person by section 44, or
 - (b) the failure of a person so authorised to perform the duty imposed by paragraph 5,
- unless the damage is attributable to the fault of the person who sustained it.
- (2) Any dispute as to a person's entitlement to compensation under this paragraph, or as to the amount of such compensation, is to be determined by arbitration.

SCHEDULE 5

(introduced by section 49)

PART 2: TRANSITIONAL ARRANGEMENTS

Interpretation

- 1 In this schedule “the relevant day” means the day on which paragraph 4 of schedule 7 comes into force.

Notifications under the 1981 Act

- 2 Paragraph 3 applies in relation to each notification given under section 28(1) of the 1981 Act (an “existing notification”) which—
- (a) has effect immediately before the relevant day, and
 - (b) where the notification was—

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- (i) given after the coming into force of the Wildlife and Countryside (Amendment) Act 1985 (c. 31), and
 - (ii) not preceded by a notice given under section 28(2) of the 1981 Act (as originally enacted) during the 6 months immediately preceding the coming into force of that Act of 1985,has been confirmed by notice under section 28(4A)(b) of the 1981 Act.
- 3 Where this paragraph applies in relation to an existing notification—
 - (a) the notification is to be treated as an SSSI notification given, and confirmed by SNH under paragraph 4 of schedule 1 to this Act, on the day on which this paragraph first applies in relation to the notification,
 - (b) any operation specified in the notification in pursuance of section 28(4)(b) of the 1981 Act is to be treated, in relation to it, as an operation requiring consent,
 - (c) any written notice given in relation to the notification for the purposes of section 28(5)(a) of the 1981 Act during the period of 4 months immediately prior to the day on which this paragraph first applies in relation to the notification is, unless SNH has given written intimation to the person who gave the notice of its refusal to consent to the operation specified in it, to be treated as an application under section 16(2) of this Act, and
 - (d) SNH is to be treated as having given its written consent on an application under section 16(2) of this Act to the carrying out of an operation which is, by virtue of sub-paragraph (b), to be treated as an operation requiring consent if SNH has, on or before the day on which this paragraph first applies in relation to the notification, given its written consent to the carrying out of the operation.
- 4 SNH must, as soon as practicable after paragraph 3 first applies in relation to an existing notification—
 - (a) prepare a site management statement in respect of the land to which the notification relates, or
 - (b) adopt an existing statement which provides guidance of the type described in section 4(2)(a) in relation to the notification as the site management statement in respect of that land.
- 5 SNH may, despite subsection (2) of section 6, carry out at such time as it thinks fit the first review under subsection (1)(b) of that section of an operation which is, by virtue of paragraph 3(b), to be treated as an operation requiring consent.
- 6 A permission to carry out an operation specified in an existing notification given before paragraph 3 first applies to the notification is not to be treated as having been given in accordance with section 15.
- 7 Where paragraph 3 does not, by virtue of paragraph 2(b), apply in relation to an existing notification—
 - (a) sections 28 and 51 of the 1981 Act, and
 - (b) section 12 of the Natural Heritage (Scotland) Act 1991 (c. 28),continue, despite the repeal of those provisions by paragraphs 4 and 8 of schedule 7, to have effect in relation to the existing notification until it is confirmed by notice under section 28(4A)(b) of the 1981 Act or ceases to have effect.

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Notifications under the 1949 Act

- 8 Paragraph 3 does not apply in relation to any notification given under section 23 of the National Parks and Access to the Countryside Act 1949 (c. 97) (a “1949 Act notification”).
- 9 Land in respect of which a 1949 Act notification has been given is, where that notification—
- (a) has, by virtue of section 28(13) of the 1981 Act, effect as if given under section 28(1)(a) of the 1981 Act, and
 - (b) has effect immediately before the relevant day,
- to be treated as a site of special scientific interest for the purposes of section 12 of this Act.
- 10 SNH may revoke a 1949 Act notification by giving notice of that fact to the interested parties.

Orders under section 29 of the 1981 Act

- 11 (1) Each order made under section 29 of the 1981 Act—
- (a) which was made before the relevant day, and
 - (b) in respect of which notice has been given under paragraph 6 of Schedule 11 to the 1981 Act of a decision to confirm it,
- is to be treated as a nature conservation order made, and confirmed under paragraph 5 of schedule 2, on that day.
- (2) Section 29 of, and Schedule 11 to, the 1981 Act continue, despite the repeal of those provisions by paragraph 4 of schedule 7, to have effect in relation to an order under section 29 of the 1981 Act which is not, by virtue of sub-paragraph (1)(b), to be treated as a nature conservation order until notice is given under paragraph 6 of Schedule 11 to the 1981 Act in respect of it.
- (3) An order made under section 29 of the 1981 which is not, by virtue of sub-paragraph (1)(b), to be treated as a nature conservation order may, despite the provisions of Schedule 11 to the 1981 Act, be revoked with immediate effect by order made by the Scottish Ministers.

Registers of notifications: transitory provisions

- 12 (1) This paragraph has effect until the day on which section 22(1) comes into force.
- (2) SNH must compile and maintain, in respect of each planning authority, a register containing—
- (a) copies of each SSSI notification which relates wholly or partly to land situated within the district of the authority,
 - (b) copies of all—
 - (i) notifications given under section 5(1), 6(5), 7(3), 8(1) or 9(1),
 - (ii) notices given under paragraph 10 or 15 of schedule 1,
 in relation to the SSSI notification, and
 - (c) such other information as SNH considers appropriate in relation to the SSSI notification.

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- (3) Each planning authority must keep a copy of the register relating to its district available at its principal office for public inspection free of charge, and may similarly keep, at such of its other offices as it thinks fit, a copy of such part of the register as appears to it to relate to the area in which the office is situated.
- (4) A register maintained under sub-paragraph (2) and a copy of all or part of a register kept under sub-paragraph (3) may be in electronic form.
- 13 Any notification, plan or notice which, immediately before the relevant day, was included in—
- (a) a register of notifications in respect of a planning authority maintained under subsection (12) of section 28 of the 1981 Act, or
 - (b) a copy of that register, or of part of it, kept under subsection (12B) of that section,
- is to be treated as included in the corresponding register maintained under sub-paragraph (2) of paragraph 12 or, as the case may be, the corresponding copy register or part kept under sub-paragraph (3) of that paragraph.

SCHEDULE 6

(introduced by section 50)

PROTECTION OF WILDLIFE

Wildlife and Countryside Act 1981 (c. 69)

- 1 The 1981 Act is amended as follows.

Protection of birds: offences

- 2 (1) Section 1 (protection of wild birds etc.) is amended as follows.
- (2) In subsection (1)—
- (a) after “intentionally” insert “or recklessly”,
 - (b) in paragraph (b), for “or destroys” substitute “, destroys or otherwise interferes with”,
 - (c) after paragraph (b) insert—
 - “(ba) at any other time takes, damages, destroys or otherwise interferes with any nest habitually used by any wild bird included in Schedule A1;
 - (bb) obstructs or prevents any wild bird from using its nest;”.
- (3) In subsection (3)—
- (a) in paragraph (a), after “taken”, where second occurring, insert “at or from a place in Scotland”,
 - (b) the word “or” at the end of that paragraph is repealed,
 - (c) in paragraph (b), after “sold” insert “at a place in Scotland”,
 - (d) after that paragraph insert “; or
 - (c) that the bird, egg or other thing in his possession or control had been killed at, taken from or sold at a place outwith Scotland and—

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- (i) that the act of killing, taking or sale would not, if it had been committed in Scotland, have been in contravention of the relevant provisions; or
 - (ii) that the bird, egg or other thing had been brought from the place where it was killed, taken or sold in accordance with the relevant regulations.”,
 - (e) the words from “and”, where first occurring, to the end of the subsection are repealed.
- (4) After that subsection insert—
 - “(3A) In subsection (3)—
 - “the relevant provisions” means such of the provisions of—
 - (a) the Protection of Birds Acts 1954 to 1967 and orders made under those Acts, and
 - (b) this Part and orders made under it,
 as were in force at the time when the bird or egg was killed or taken or, as the case may be, the bird, egg or other thing was sold,
 - “the relevant regulations” means—
 - (a) Council Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade, and
 - (b) Commission Regulation 1808/2001/EC on the implementation of that Council Regulation,
 as amended from time to time (or any Community instrument replacing either of them).”
- (5) In subsection (5), after “intentionally” insert “or recklessly”.
- (6) After that subsection insert—
 - “(5A) Subject to the provisions of this Part, any person who intentionally or recklessly disturbs any wild bird included in Schedule 1 which leks while it is doing so shall be guilty of an offence.
 - (5B) Subject to the provisions of this Part, any person who intentionally or recklessly harasses any wild bird included in Schedule 1A shall be guilty of an offence.
 - (5C) 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.”
- 3 In section 2 (exceptions to offences against wild birds etc.)—
 - (a) subsection (2) is repealed,
 - (b) in subsection (3), for “Subsections (1) and (2)” substitute “Subsection (1)”.
- 4 In section 3 (areas in which wild birds are given special protection)—
 - (a) in subsection (1)(a), after “intentionally” insert “or recklessly”,
 - (b) subsection (2) is repealed.
- 5 (1) Section 4 (exceptions to offences against wild birds etc.) is amended as follows.

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- (2) In subsection (2), in paragraph (c), for the words from “if” to the end substitute “(“an unlawful act”) if he shows that each of the conditions specified in subsection (2A) was satisfied in relation to the carrying out of the unlawful act.”
- (3) After that subsection insert—
- “(2A) Those conditions are—
- (a) that the unlawful act was the incidental result of a lawful operation or other activity;
 - (b) that the person who carried out the lawful operation or other activity—
 - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
 - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
 - (c) that the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild bird, nest or, as the case may be, egg in relation to which the unlawful act was carried out.”
- (4) In subsection (4), for “(3)(c)” substitute “(3)”.
- (5) In subsection (5)—
- (a) for “(3)(c)” substitute “(3)”,
 - (b) for “paragraph” substitute “subsection”.
- (6) In subsection (6), for “(3)(c)” substitute “(3)”.
- 6 In section 5 (prohibition of certain methods of killing or taking wild birds)—
- (a) in subsection (1)(a), for “calculated” substitute “likely”,
 - (b) paragraphs (a) and (b) of subsection (5) are repealed.
- 7 In section 7(3) (prohibition on possessing certain birds)—
- (a) the word “or” at the end of paragraph (a) is repealed,
 - (b) after paragraph (b) insert “; or
 - (c) any offence under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 ([S.I. 1997/1372](#)) relating to birds (other than an offence under Regulation 9 of those Regulations)”.

Protection of animals: offences

- 8 (1) Section 9 (protection of certain wild animals) is amended as follows.
- (2) In subsection (1), after “intentionally” insert “or recklessly”.
- (3) In subsection (3)—
- (a) in paragraph (a), after “taken”, where second occurring, insert “at or from a place in Scotland”,
 - (b) the word “or” at the end of that paragraph is repealed,

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- (c) in paragraph (b), after “sold” insert “at a place in Scotland”,
- (d) after paragraph (b) insert “; or
 - (c) that the animal or other thing in his possession or control had been killed at, taken from or sold at a place outwith Scotland and—
 - (i) that the act of killing, taking or sale would not, if it had been committed in Scotland, have been in contravention of the relevant provisions; or
 - (ii) that the animal or other thing had been brought from the place where it was killed, taken or sold in accordance with the relevant regulations.”,
- (e) the words from “and”, where first occurring, to the end of the subsection are repealed.

(4) After that subsection insert—

“(3A) In subsection (3)—

“the relevant provisions” means such of the provisions of the Conservation of Wild Creatures and Wild Plants Act 1975 (c. 48) and this Part as were in force at the time when the animal was killed or taken or, as the case may be, the animal or other thing was sold, and
“the relevant regulations” means—

- (a) Council Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade, and
- (b) Commission Regulation 1808/2001/EC on the implementation of that Council Regulation,

as amended from time to time (or any Community instrument replacing either of them).”

(5) In subsection (4), after “intentionally” insert “or recklessly”.

(6) After that subsection insert—

“(4A) Subject to the provisions of this Part, any person who, intentionally or recklessly, disturbs or harasses any wild animal included in Schedule 5 as a—

- (a) dolphin, whale or porpoise (cetacea); or
- (b) basking shark (*cetorhinus maximus*),

shall be guilty of an offence.”

(7) 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 (other than subsection (5)(b)) shall be guilty of an offence.”

(8) In subsection (6), after “(5)(a)” insert “or for an offence under subsection (5A) relating to an act which is mentioned in subsection (1), (2) or (5)(a)”.

9 In section 10 (exceptions to offences against wild animals)—

- (a) in subsection (3), in paragraph (c), for the words from “if” to the end substitute “(“an unlawful act”) if he shows—

Status: This is the original version (as it was originally enacted).

- (i) that each of the conditions specified in subsection (3A) was satisfied in relation to the carrying out of the unlawful act, or
 - (ii) that the unlawful act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.”,
 - (b) after that subsection insert—
 - “(3A) Those conditions are—
 - (a) that the unlawful act was the incidental result of a lawful operation or other activity;
 - (b) that the person who carried out the lawful operation or other activity—
 - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
 - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
 - (c) that the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal, or the damage or obstruction to the structure or place, in relation to which the unlawful act was carried out.”,
 - (c) after subsection (6) insert—
 - “(6A) An authorised person shall not be entitled to rely on the defence provided by subsection (4) as respects any action taken at any time unless he notified the Scottish Ministers as soon as reasonably practicable after that time that he had taken the action.”
- 10 (1) Section 11 (prohibition of certain methods of killing or taking wild animals) is amended as follows.
 - (2) In subsection (1)(a)—
 - (a) after “position” insert “or otherwise uses”,
 - (b) for the words from “which” to the end of the paragraph substitute “or a snare of any other type specified in an order made by the Scottish Ministers”.
 - (3) After that paragraph insert—
 - “(aa) sets in position or otherwise uses any other type of snare which is either 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;”.
 - (4) In subsection (1)(b), for the words from “wild” to “aforesaid,” substitute “animal”.
 - (5) In subsection (2)(a), for “calculated” substitute “likely”.
 - (6) For subsection (3) substitute—

Status: This is the original version (as it was originally enacted).

- “(3) Any person who sets a snare in position or who knowingly causes or permits a snare to be so set 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.
- (3A) Any person who, while carrying out such an inspection, finds an animal caught by the snare being inspected must, during the course of the inspection, release or remove the animal (whether live or dead).
- (3B) Subject to the provisions of this Part, any person who—
- (a) without reasonable excuse, contravenes subsection (3), or
 - (b) contravenes subsection (3A),
- shall be guilty of an offence.
- (3C) Subject to the provisions of this Part, any person who—
- (a) is, without reasonable excuse, in possession of; or
 - (b) sells, or offers or exposes for sale,
- a snare which is capable of operating as a self-locking snare or a snare of any other type specified in an order under subsection (1)(a) shall be guilty of an offence.
- (3D) 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,
- shall be guilty of an offence.
- (3E) Subject to the provisions of this Part, any person who uses a snare otherwise than in accordance with such requirements as may be specified in an order made by the Scottish Ministers, or who knowingly causes or permits any other person to do so, shall be guilty of an offence.”

(7) After subsection (4) insert—

- “(4A) The Scottish Ministers may by order specify—
- (a) criteria which articles of a type referred to in subsections (1) to (3E) must meet to be treated as articles of that type for the purposes of those subsections,
 - (b) circumstances in which articles of that type are to be treated as having been set or used in a manner which constitutes an offence under those subsections.”

(8) In subsection (5), for “(1)(b) or (c)” substitute “(1)(c)”.

Protection of plants: offences

11 (1) Section 13 (protection of wild plants) is amended as follows.

- (2) In subsection (1)(a)—
- (a) after “intentionally” insert “or recklessly”,
 - (b) after “destroys” insert “—
(i)”,

Status: This is the original version (as it was originally enacted).

(c) at the end insert—

“(ii) any seed or spore attached to any such wild plant;
or”.

(3) In subsection (1)(b), after “intentionally” insert “or recklessly”.

(4) In subsection (3), for the words from “if” to the end substitute “(“an unlawful act”) if he shows—

(a) that the unlawful act was the incidental result of a lawful operation or other activity;

(b) that the person who carried out the lawful operation or other activity—

(i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or

(ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and

(c) that the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent, such steps as were reasonably practicable in the circumstances to minimise the damage to the wild plant in relation to which the unlawful act was carried out.”

(5) After that subsection insert—

“(3A) 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.”

(6) In subsection (4), after “(2)(a)” insert “or for an offence under subsection (3A) relating to an act which is mentioned in subsection (2)(a)”.

Non-native species

12 In section 14 (prohibition on introducing new species)—

(a) in subsection (1)(b), for the words from “included” to “9” substitute “a hybrid of any animal of that kind”,

(b) after subsection (1) insert—

“(1A) Subject to the provisions of this Part, if any person releases or allows to escape from captivity any animal which is—

(a) included in Part I of Schedule 9; or

(b) a hybrid of any animal included in that Part,

he shall be guilty of an offence.”,

(c) in subsection (2)—

(i) after “is” insert —

“(a)”,

(ii) after “9” insert “; or

(b) a hybrid of any plant included in that Part”.

13 After section 14 insert—

Status: This is the original version (as it was originally enacted).

“14A Prohibition on sale etc. of certain animals or plants

- (1) This section applies to—
 - (a) any animal of a type mentioned in subsection (1) or (1A) of section 14 specified in an order made by the Scottish Ministers for the purposes of this section; and
 - (b) any plant—
 - (i) which does not ordinarily grow in Great Britain in a wild state or which is a hybrid of such a plant; or
 - (ii) of a type mentioned in subsection (2) of section 14, specified in such an order.
- (2) Subject to the provisions of this Part, any person who—
 - (a) sells, offers or exposes for sale or has in the person’s possession or transports for the purpose of sale any animal or plant to which this section applies; or
 - (b) publishes or causes to be published any advertisement likely to be understood as conveying that the person buys or sells, or intends to buy or sell, any such animal or plant,is guilty of an offence.
- (3) An order under subsection (1) may specify particular types of animals or plants—
 - (a) subject to such exceptions;
 - (b) only at such times of the year;
 - (c) only in relation to such areas,as the order may specify.

14B Guidance: non-native species

- (1) The Scottish Ministers may issue guidance (or approve guidance issued by others) for the purpose of providing persons with recommendations, advice and information regarding—
 - (a) any animal of a type mentioned in subsection (1) or (1A) of section 14,
 - (b) any plant of a type mentioned in subsection (2) of that section or specified in an order under section 14A(1)(b)(i),and may issue revisions of any guidance issued by them (or approve revisions of guidance issued by others).
- (2) A person who fails to comply with any guidance issued or approved under subsection (1) is not by reason only of that failure liable in any criminal or civil proceedings.
- (3) But any such guidance is admissible in evidence in such proceedings and a court may take account of any failure to comply with it in determining any questions in the proceedings.”

Miscellaneous

14 After section 15 insert—

“15A Possession of pesticides

- (1) Any person who is in possession of any pesticide containing one or more prescribed active ingredient shall be guilty of an offence.
- (2) A person shall not be guilty of an offence under subsection (1) if the person shows that the possession of the pesticide was for the purposes of doing anything in accordance with—
 - (a) any regulations made under section 16(2) of the Food and Environment Protection Act 1985 (c. 48), or
 - (b) the Biocidal Products Regulations 2001 (S.I. 2001/880) or any regulations replacing those regulations.
- (3) In this section—

“pesticide” has the meaning given in the Food and Environment Protection Act 1985 (c. 48), and

“prescribed active ingredient” means an ingredient of a pesticide which fits it for use as such and which is of a type prescribed by order made by the Scottish Ministers.”

15 In section 16 (power to grant licences)—

- (a) in subsection (2)(b), the words from “or,” to “egg”, where second occurring, are repealed,
- (b) in subsection (3)—
 - (i) for “and (4)” substitute “, (4) and (4A)”,
 - (ii) for “and (2)” substitute “, (2) and (3C)(a)”,
 - (iii) in paragraph (a), after “scientific” insert “, research”,
 - (iv) in paragraph (c), after “conserving” insert “wild birds”,
 - (v) after that paragraph insert—

“(ca) for the purpose of conserving any area of natural habitat;”,
- (c) in subsection (4), for “section 14” substitute “sections 14 and 14A”,
- (d) after subsection (4) insert—

“(4A) The appropriate authority shall not grant a licence under subsection (4) permitting anything to be done in contravention of section 6(1) or (2) unless it is satisfied that there is no other satisfactory solution.”

16 In section 19 (enforcement)—

- (a) in subsection (1)(b)—
 - (i) at beginning insert “search for”,
 - (ii) for the words “have in his possession” substitute “may have used, or may have or have had in his possession”,
 - (iii) after “found” insert “in or”,
- (b) in subsection (2)—
 - (i) after “committing” insert “or has committed”,
 - (ii) for “dwelling-house” substitute “dwelling or lockfast premises”,

Status: This is the original version (as it was originally enacted).

- (c) in subsection (3)—
 - (i) for “information” substitute “evidence”,
 - (ii) for the words from “(with” to “premises” in the second place where it occurs substitute “to enter those premises, if necessary using reasonable force, and search them”,
- (d) after subsection (3) insert—
 - “(4) A warrant under subsection (3) 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.
 - (5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier’s behalf, produce evidence of the constable’s authority.
 - (6) A constable who enters any land in the exercise of a power conferred by this section—
 - (a) may—
 - (i) be accompanied by any other persons, and
 - (ii) take any machinery, other equipment or materials on to the land,
 for the purpose of assisting the constable in the exercise of that power,
 - (b) may take samples of any articles or substances found there and remove the samples from the land.
 - (7) A power specified in subsection (6)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.
 - (8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) or by a warrant under subsection (3), being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.”

17 After section 19ZB (inserted, as respects England and Wales, by Schedule 12 to the Countryside and Rights of Way Act 2000 (c. 37)) insert—

“19ZC Wildlife inspectors: Scotland

- (1) The Scottish Ministers may authorise any person to carry out the functions conferred by this section and section 19ZD(3), (4) and (8) (and any person so authorised is to be known as a “wildlife inspector”).
- (2) An authorisation under subsection (1)—
 - (a) shall be in writing, and
 - (b) is subject to any conditions or limitations specified in it.
- (3) A wildlife inspector may, at any reasonable time and (if required to do so) upon producing evidence of authorisation, enter and inspect—
 - (a) any premises for the purpose of ascertaining whether an offence under section 6, 9(5) or 13(2) is being, or has been, committed on those premises;

Status: This is the original version (as it was originally enacted).

- (b) any premises where the inspector has reasonable cause to believe that any birds included in Schedule 4 are kept, for the purpose of ascertaining whether an offence under section 7 is being, or has been, committed on those premises;
 - (c) any premises where the inspector has reasonable cause to believe that any birds are kept, for the purpose of ascertaining whether an offence under section 8(1) is being, or has been, committed on those premises;
 - (d) any premises for the purpose of ascertaining whether an offence under section 14 or 14A is being, or has been, committed on those premises;
 - (e) any premises for the purpose of verifying any statement or representation which has been made by an occupier, or any document or information which has been furnished by the occupier, and which the occupier made or furnished—
 - (i) for the purposes of obtaining (whether for the occupier or another person) a relevant registration or licence; or
 - (ii) in connection with a relevant registration or licence held by the occupier.
- (4) In subsection (3)—
- (a) paragraphs (a) to (c) do not confer power to enter a dwelling except for purposes connected with—
 - (i) a relevant registration or licence held by an occupier of the dwelling; or
 - (ii) an application by an occupier of the dwelling for a relevant registration or licence,
 - (b) paragraph (d) does not confer power to enter a dwelling.
- (5) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 8(1), 9(5), 13(2), 14 or 14A is being, or has been, committed in respect of any specimen, require any person who has possession or control of the specimen to make it available for examination by the inspector.
- (6) Any person who has possession or control of any live bird or other animal shall give any wildlife inspector acting in the exercise of powers conferred by this section such assistance as the inspector may reasonably require for the purpose of examining the bird or other animal.
- (7) Any person who—
- (a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by subsection (3) or (5); or
 - (b) fails without reasonable excuse to give any assistance reasonably required under subsection (6),
- shall be guilty of an offence.
- (8) Any person who, with intent to deceive, falsely pretends to be a wildlife inspector shall be guilty of an offence.
- (9) In this section—
- “relevant registration or licence” means—

Status: This is the original version (as it was originally enacted).

- (a) a registration in accordance with regulations under section 7(1); or
- (b) a licence under section 16 authorising anything which would otherwise be an offence under section 6, 7, 8(1), 9(5), 13(2), 14 or 14A;

“specimen” means any bird, other animal or plant or any part of, or anything derived from, a bird, other animal or plant.

19ZD Power to take samples: Scotland

- (1) A constable who suspects with reasonable cause that a specimen found by the constable in the exercise of powers conferred by section 19 is one in respect of which an offence under this Part is being or has been committed may require the taking from it of a sample of blood or tissue in order to determine its origin, identity or ancestry.
- (2) A constable who suspects with reasonable cause that an offence under this Part is being or has been committed in respect of any specimen (“the relevant specimen”) may require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person’s possession or control which is alleged to be, or which the constable suspects with reasonable cause to be, a specimen a sample from which will tend to establish the origin, identity or ancestry of the relevant specimen.
- (3) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2), 14 or 14A is being or has been committed, require the taking of a sample of blood or tissue from a specimen found by the inspector in the exercise of powers conferred by section 19ZC(3)(a) to (d) in order to determine its origin, identity or ancestry.
- (4) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2), 14 or 14A is being or has been committed in respect of any specimen (“the relevant specimen”), require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person’s possession or control which is alleged to be, or which the inspector suspects with reasonable cause to be, a specimen a sample from which will tend to establish the origin, identity or ancestry of the relevant specimen.
- (5) No sample from a live bird, other animal or plant shall be taken pursuant to a requirement under this section unless the person taking it is satisfied on reasonable grounds that taking the sample will not cause lasting harm to the specimen.
- (6) No sample from a live bird or other animal shall be taken pursuant to such a requirement except by a veterinary surgeon.
- (7) Where a sample from a live bird or other animal is to be taken pursuant to such a requirement, any person who has possession or control of the specimen shall give the person taking the sample such assistance as that person may reasonably require for that purpose.
- (8) A constable entering premises under section 19(2), and any wildlife inspector entering premises under section 19ZC(3), may take with him a

Status: This is the original version (as it was originally enacted).

veterinary surgeon if the constable or, as the case may be, inspector has reasonable grounds for believing that such a person will be required for the exercise on the premises of powers under subsection (1) or (2) or, as the case may be, (3) or (4).

(9) Any person who—

- (a) intentionally obstructs a wildlife inspector acting in the exercise of the power conferred by subsection (3),
- (b) fails without reasonable excuse to make available any specimen in accordance with a requirement under subsection (2) or (4), or
- (c) fails without reasonable excuse to give any assistance reasonably required under subsection (7),

shall be guilty of an offence.

(10) In this section—

- (a) “specimen” has the same meaning as in section 19ZC;
- (b) in relation to a specimen which is a part of, or is derived from, a bird, other animal or plant, references to determining its origin, identity or ancestry are to determining the origin, identity or ancestry of the bird, other animal or plant.”

18 In section 20(2) (summary prosecutions)—

- (a) for “two” substitute “three”, and
- (b) at the end insert “or, in the case of a continuous contravention, after the last date on which the offence was committed”.

19 In section 21 (penalties etc.)—

- (a) in subsection (1), for “or section 17” substitute “, 15A, 17, 19ZC (other than an offence under section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by section 19ZC(3)(d)) or 19ZD”,
- (b) in subsection (4)—
 - (i) after “14” insert “or 14A”,
 - (ii) in paragraph (a), for “the statutory maximum” substitute “£40,000”,
- (c) after subsection (4) insert—

“(4A) A person guilty of an offence under section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by subsection (3)(d) of that section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.”,
- (d) in subsection (6)(b), after “14” insert “or 14A”.

20 In section 22 (power to vary Schedules)—

- (a) in subsection (1)—
 - (i) after “year” insert “—
(a)”,
 - (ii) for “1” substitute “A1”,
 - (iii) at the end insert—

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- “(b) add any animal to, or remove any animal from, Schedule 5 or 6 or Part I of Schedule 9;
 - “(c) add any plant to, or remove any plant from, Schedule 8 or Part II of Schedule 9.”,
 - (b) after subsection (2) insert—
 - “(2A) Before making an order under subsection (1) the Scottish Ministers shall consult Scottish Natural Heritage.”,
 - (c) subsections (4) and (5) are repealed.
- 21 In section 26 (procedure for orders)—
 - (a) in each of subsections (2) and (3), for “11” substitute “11(4)”,
 - (b) in subsection (4)(b), for “22(3)” substitute “22”.
- 22 After section 26 insert—

“26A Enforcement of wildlife legislation

Regulations under section 2(2) of the European Communities Act 1972 (c. 68) for the purpose of implementing Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as amended by the Act of Accession to the European Union of Austria, Finland and Sweden and by Council Directive 97/62/EC may, despite paragraph 1(1)(d) of Schedule 2 to that Act, create offences punishable on summary conviction with imprisonment for a term not exceeding six months.”

- 23 (1) Section 27 (interpretation of Part I) is amended as follows.
- (2) In subsection (1)—
 - (a) in the definition of “poultry”, for “domestic” substitute “the domestic forms of the following, that is to say”,
 - (b) in the definition of “wild bird”—
 - (i) for “kind” substitute “species”,
 - (ii) for “Great Britain” substitute “any member State or the European territory of any member State”,
 - (c) in the definition of “wild plant”, after “plant” insert “(including fungi)”.
- (3) After subsection (2) insert—
 - “(2A) An animal shall not be treated as bred in captivity for the purposes of this Part unless its parents were lawfully held in captivity—
 - (a) where the animal is of a viviparous species, when it was born,
 - (b) where the animal is of an oviparous species, when the egg was laid.”
- (4) After subsection (3) insert—
 - “(3ZA) Any reference in this Part to a plant which is growing—
 - (a) includes a reference to a bulb, corm or rhizome;
 - (b) does not include a reference to a seed or spore.”
- 24 Before Schedule 1 insert—

Status: This is the original version (as it was originally enacted).

“SCHEDULE A1
PROTECTED NESTS AND NEST SITES: BIRDS

Common name	Scientific name
Eagle, White-tailed	Haliaeetus albicilla”.

25 After Schedule 1 insert—

“SCHEDULE 1A
BIRDS WHICH ARE PROTECTED FROM HARASSMENT

Common name	Scientific name
Eagle, White-tailed	Haliaeetus albicilla”.

Protection of Badgers Act 1992 (c. 51)

- 26 (1) The Protection of Badgers Act 1992 is amended as follows.
- (2) In section 1 (taking, injuring or killing badgers)—
- (a) in subsection (1), the words “, or attempts to kill, injure or take,” are repealed,
 - (b) subsection (2) is repealed.
- (3) In section 3 (interfering with badger setts)—
- (a) the existing provision becomes subsection (1),
 - (b) after that provision insert—
- “(2) 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) above.”
- (4) In section 6 (general exceptions from offences)—
- (a) in paragraph (a)—
 - (i) after “his” insert “unlawful”,
 - (ii) after “it” insert “and releasing it when no longer disabled”,
 - (b) in paragraph (b), for the words from “appears” to “mercy” substitute “has been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of it recovering”.
- (5) In section 8 (exceptions from offence of interfering with badger setts)—
- (a) in subsection (1), for “3” substitute “3(1) or (2)”,
 - (b) in subsection (3)—
 - (i) for “3(a)” substitute “3(1)(a)”,
 - (ii) after “above” insert “or an offence under section 3(2) above relating to an offence under section 3(1)(a), (c) or (e) above”.

Status: This is the original version (as it was originally enacted).

- (6) In section 9 (exceptions from offence of possessing or controlling live badger), in paragraph (b)—
- (a) after “his”, where first occurring, insert “unlawful”,
 - (b) after “it”, where second occurring, insert “and releasing it when no longer disabled”.
- (7) For section 11 substitute—

“11 Powers of constables

- (1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, without warrant—
- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
 - (b) search for, search or examine any thing which that person may then be using or may have used, or may have or have had in the person’s possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing;
 - (c) arrest that person;
 - (d) seize and detain for the purposes of proceedings under this Act any thing which may be evidence of the commission of the offence or may be liable to be forfeited under section 12(4) below.
- (2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, for the purpose of exercising the powers conferred by subsection (1) above, enter any land other than a dwelling or lockfast premises.
- (3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under this Act has been committed and that evidence of the offence may be found on any premises, the sheriff or justice may grant a warrant authorising a constable to enter those premises, if necessary using reasonable force, and search them for the purposes of obtaining that evidence.
- (4) A warrant under subsection (3) above 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.
- (5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier’s behalf, produce evidence of the constable’s authority.
- (6) A constable who enters any land in the exercise of a power conferred by this section—
- (a) may—
 - (i) be accompanied by any other persons; and
 - (ii) take any machinery, other equipment or materials on to the land,

Status: This is the original version (as it was originally enacted).

for the purpose of assisting the constable in the exercise of that power;

- (b) may take samples of any articles or substances found there and remove the samples from the land.

(7) A power specified in subsection (6)(a) or (b) above which is exercisable under a warrant is subject to the terms of the warrant.

(8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) above or by a warrant under subsection (3) above, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.”

(8) After section 11 insert—

“11A Attempts

(1) A person who attempts to commit an offence under this Act is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) A person who is in possession, for the purposes of committing an offence under this Act, of anything capable of being used for committing the offence is guilty of the offence and is liable to be proceeded against and punished accordingly.

(3) If, in any proceedings for an offence under section 1(1) above consisting of an attempt to kill, injure or take a badger, there is evidence from which it could reasonably be concluded that at the material time the accused was attempting to kill, injure or take a badger, he shall be presumed to have been attempting to kill, injure or take a badger unless the contrary is shown.”

(9) In section 12 (penalties etc.)—

(a) in subsection (1)—

(i) for “2 or 3 above ” substitute “2(1)(d), 3(1)(a) to (c) or (e) above or under section 3(2) above (in relation to an act made unlawful by section 3(1)(a) to (c) or (e) above)”,

(ii) the word “4,” is repealed,

(b) after subsection (1) insert—

“(1A) A person guilty of an offence under section 2(1)(a) to (c), 3(1)(d) or 4 above or under section 3(2) above (in relation to an act made unlawful by section 3(1)(d) above) is liable—

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both,

(b) on conviction on indictment to imprisonment for a term not exceeding three years or to a fine or both.”,

(c) in subsection (2), after “(1)” insert “or (1A)(a)”.

(10) After section 12 insert—

Status: This is the original version (as it was originally enacted).

“12A Time limit for bringing summary proceedings

- (1) Summary proceedings for an offence under section 1(1), 2, 3, 5 or 10(8) of this Act may, subject to subsection (2) below, be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor’s knowledge.
- (2) No such proceedings may be brought more than 3 years—
 - (a) after the commission of the offence, or
 - (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (3) A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor’s knowledge is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

12B Offences by bodies corporate etc.

- (1) Where an offence under this Act committed—
 - (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a director, manager or secretary of the body corporate, or
 - (ii) purports to act in any such capacity,
 - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a partner, or
 - (ii) purports to act in that capacity,
 - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is concerned in the management or control of the association, or
 - (ii) purports to act in the capacity of a person so concerned,

the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) 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) above applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.
 - (3) Any penalty imposed on a body corporate, Scottish partnership or, as the case may be, unincorporated association on conviction of an offence under this Act is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995 (c. 46).”
- (11) In section 13 (power of court where dog used etc.), in subsection (1), for “3” substitute “3(1) or (2)”.

SCHEDULE 7

(introduced by section 57)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

Harbours Act 1964 (c. 40)

- 1 In Schedule 3 to the Harbours Act 1964 (procedure for making harbour revision and empowerment orders), in paragraph 1 (interpretation)—
- (a) for paragraphs (a) and (b) of the definition of “sensitive area” substitute—
 - “(a) land within a site of special scientific interest;
 - (b) land in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect;”;
 - (b) in paragraph (k) of that definition, the words “as a natural heritage area under section 6(2) of the Natural Heritage (Scotland) Act 1991 or” are repealed.

Forestry Act 1967 (c. 10)

- 2 (1) The Forestry Act 1967 is amended as follows.
- (2) In section 10(2) (decisions of Forestry Commissioners on felling licences)—
- (a) the word “or” at the end of paragraph (a) is repealed,
 - (b) after paragraph (b) insert “; or
 - (c) for the purpose of conserving or enhancing the flora, fauna or geological or physiographical features, or the natural beauty or amenity, of any land.”
- (3) In section 12 (conditions attached to felling licences)—
- (a) in subsection (1), for “10(2)” substitute “10(2)(a) or (b)”,
 - (b) in subsection (2), after “imposed” insert “under section 10(2)(a) or (b) above”.

Conservation of Seals Act 1970 (c. 30)

- 3 In section 10 of the Conservation of Seals Act 1970 (power to grant licences to kill or take seals), in subsection (4)—
- (a) for paragraphs (b) and (c) substitute—
 - “(b) is a site of special scientific interest;
 - (c) is an area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect; or”;
 - (b) in paragraph (d), for “that Act” substitute “the Wildlife and Countryside Act 1981”.

Wildlife and Countryside Act 1981 (c. 69)

- 4 Sections 28 to 34, 41, 50, 51 and 74(5A) of, and Schedule 11 to, the 1981 Act are repealed.

Status: This is the original version (as it was originally enacted).

Road Traffic Regulation Act 1984 (c. 27)

- 5 In section 22(1)(b) (traffic regulation for special areas in the countryside) of the Road Traffic Regulation Act 1984, sub-paragraph (iii) is repealed.

Channel Tunnel Act 1987 (c. 53)

- 6 Section 9(7) of the Channel Tunnel Act 1987 is repealed.

Environmental Protection Act 1990 (c. 43)

- 7 In section 36(7) (requirement to consult SNH before issuing waste management licence) of the Environmental Protection Act 1990, for the words from “land”, where it second occurs, to “areas)” substitute “within a site of special scientific interest or any area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect”.

Natural Heritage (Scotland) Act 1991 (c. 28)

- 8 Sections 6 (Natural Heritage Areas) and 12 (Advisory Committee on SIs) of the Natural Heritage (Scotland) Act 1991 are repealed.

Scottish Land Court Act 1993 (c. 45)

- 9 In section 1(7) (determination by Court of Session of point of law) of the Scottish Land Court Act 1993, after “enactment” there is inserted “, or under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6),”.

Environment Act 1995 (c. 25)

- 10 (1) Section 35 (duties of SEPA in relation to Natural Heritage Areas and sites of special interest) of the Environment Act 1995 is repealed.
- (2) In section 36 (codes of practice) of that Act—
- (a) in subsection (1)(a), for “, 34(2) and 35” substitute “and 34(2)”,
 - (b) in subsection (2), for “, 34(2) or 35” substitute “or 34(2)”.

Deer (Scotland) Act 1996 (c. 58)

- 11 In schedule 3 (penalties for offences relating to deer) to the Deer (Scotland) Act 1996, after the entry for section 17(2) insert—

“17(3)	Killing or injuring deer otherwise than by shooting	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”.
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Town and Country Planning (Scotland) Act 1997 (c. 8)

- 12 (1) In section 54(1) (land which may not be included in simplified planning zone) of the Town and Country Planning (Scotland) Act 1997, for paragraph (d) substitute—
- “(d) land in a site of special scientific interest;
 - (e) land in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect;”.
- (2) Section 264 (Natural Heritage Areas) is repealed.

Water Industry (Scotland) Act 2002 (asp 3)

- 13 In section 54 (protection of natural heritage) of the Water Industry (Scotland) Act 2002—
- (a) in subsection (1), for “protected area” substitute “European site within the meaning of Regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716)”;
 - (b) subsection (2) is repealed,
 - (c) in subsection (3)—
 - (i) paragraphs (a) and (b), and
 - (ii) the words “in the case of an area mentioned in subsection (2)(c),” in paragraph (c),are repealed,
 - (d) in subsection (4)—
 - (i) for “protected area” substitute “European site”,
 - (ii) the words from “was” to “be,” are repealed.