

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Part 2 – Wildlife under the 1981 Act

Section 5 – Sale of live or dead wild birds, their eggs etc.

36. **Section 5** of the Act amends sections 2 and 6 of, and Schedule 3, to the 1981 Act. Section 6 of the 1981 Act creates offences in particular in relation to the sale of live wild birds and their eggs. Those offences are subject to exceptions which apply to certain species of bird which are listed in Schedule 3 to the 1981 Act.
37. The amendments to section 6 and Schedule 3 of the 1981 Act have the effect of extending the exception relating to the sale of dead birds to game birds (red grouse, grey partridge, red-legged partridge, common pheasant and mallard) as listed in new Part IIA of that Schedule, which are lawfully killed outside the close season. These provisions should be read with section 25 and Part 2 of the schedule, which repeal older restrictions on the sale of game birds. The amendments to section 2(4) and (6) of the 1981 Act (which provide for close seasons) are consequential on these changes.
38. The amendments to section 6 and Schedule 3 of the 1981 Act also extend the exceptions in section 6 to permit the sale of live game birds and their eggs (red grouse, grey partridge, red-legged partridge, common pheasant and mallard) as listed in new Part 1A of that Schedule if lawfully taken or collected outside close seasons or in accordance with the “catching up” provisions in section 2(3A) to (3C) of that Act, as inserted by section 3 of the Act.
39. The amendments to Schedule 3 of the 1981 Act also remove the restrictions on selling certain birds between 28 February and 1 September by moving all the species currently listed in Part III of Schedule 3 to new Part IIA of that Schedule (birds killed outside close season by certain persons). Part III of the Schedule is not however revoked, and birds could in future be added to that Part by an order made under section 22 of the 1981 Act.
40. The amendments to section 2(4) and (6) of the 1981 Act (which provide for close seasons) are consequential on these changes.
41. Paragraph (d) of subsection (3) replaces subsection (5) of section 6 the 1981 Act with new subsections 6(5) and (5A). The effect of the changes made by that paragraph is that the offences in section 6(1) of that Act applies to birds bred in captivity and lawfully released for conservation purposes. Section 6(5A) re-enacts the enabling power in section 6(5) of the Act.
42. Paragraph (f) of subsection (3) makes a minor change to section 6 of the 1981 Act. It replaces subsection (6) of that section to remove a redundant reference to Part II of Schedule 3.