



# Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

## PART 2

### WILDLIFE UNDER THE 1981 ACT

#### *Wild birds, their nests and eggs*

#### **2 Application of the 1981 Act to game birds**

In section 27(1) of the 1981 Act (interpretation of Part I)—

- (a) the definition of “game bird” is repealed,
- (b) in the definition of “wild bird”, the words “or, except in sections 5 and 16, any game bird” are repealed.

#### **Commencement Information**

**II** S. 2 in force at 29.6.2011 by [S.I. 2011/279](#), [art. 2\(1\)\(a\)](#)

#### **3 Protection of game birds etc. and prevention of poaching**

- (1) The 1981 Act is amended as follows.
- (2) In the italic heading before section 1 (protection of wild birds, their nests and eggs), at the end add “ and prevention of poaching ”.
- (3) In that section, for subsection (6) (“wild birds” in section 1 does not include birds shown to have been bred in captivity), substitute—
  - “(6) For the purposes of this section, the definition of “wild bird” in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless—
    - (a) it has been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme; or

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- (b) it is a mallard, grey or red-legged partridge, common pheasant or red grouse which is no longer in captivity and is not in a place where it was reared.”.

(4) In section 2 (exceptions to section 1)—

- (a) in the title, at the end add “ : acts by certain persons outside close season ”,
- (b) in subsection (1), after “this section,” insert “ where subsection (1A) applies ”,
- (c) after that subsection insert—

“(1A) This subsection applies where—

- (a) the person who kills or injures had—
  - (i) a legal right to kill such a bird; or
  - (ii) permission, from a person who had a right to give permission, to kill such a bird; or
- (b) the person who takes had—
  - (i) a legal right to take such a bird; or
  - (ii) permission, from a person who had a right to give permission, to take such a bird.”,
- (d) in subsection (3), after “Christmas Day” insert “ in relation to those birds included in Part I of Schedule 2 which are also included in Part IA of that Schedule ”,
- (e) after subsection (3), insert—

“(3A) Subject to the provisions of this section, where subsection (3B) applies a person does not commit an offence under section 1 by reason of the taking for the purposes of breeding of—

- (a) a partridge or pheasant included in Part I of Schedule 2; or
- (b) an egg of such a bird.

(3B) This subsection applies where—

- (a) the person who takes does so during the period of 28 days commencing with the first day of the close season for the bird; and
- (b) the person who takes had—
  - (i) a legal right to take such a bird; or
  - (ii) permission, from a person who had a right to give permission, to take such a bird.

(3C) A person does not commit an offence under section 1 by reason of the taking of a red grouse if—

- (a) the grouse is taken—
  - (i) for the purpose of preventing the spread of disease; and
  - (ii) with the intention of releasing it from captivity after no more than 12 hours; and
- (b) the person had—
  - (i) a legal right to take such a grouse; or
  - (ii) permission, from a person who had a right to give permission, to take such a grouse.”,

- (f) in subsection (4)—

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- (i) after paragraph (b) insert—
  - “(ba) in the case of pheasant, the period in any year commencing with 2nd February and ending with 30th September;
  - (bb) in the case of partridge, the period in any year commencing with 2nd February and ending with 31st August;”
- (ii) after paragraph (c) insert—
  - “(ca) in the case of black grouse, the period commencing with 11th December in any year and ending with 19th August in the following year;
  - (cb) in the case of ptarmigan and red grouse, the period commencing with 11th December in any year and ending with 11th August in the following year;”
- (g) in subsection (7)—
  - (i) for “a person” substitute “ such persons ”,
  - (ii) at the end add “ as he considers appropriate ”.
- (5) In section 5(5) (use of cage traps or nets for breeding purposes), for “game bird” substitute “ grouse, mallard, partridge or pheasant included in Part I of Schedule 2 ”.
- (6) In section 26 (regulations, orders, notices etc.)—
  - (a) in subsection (2)—
    - (i) after “than” insert “—
      - (a) an order under any of”,
    - (ii) for “and” substitute “ or ”,
    - (iii) after “11(4)” insert “; and
      - (b) an order under section 22(1)(a) which removes from Part I of Schedule 2 black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge;”
  - (b) in subsection (3)—
    - (i) after “No” insert “—
      - (a)”,
    - (ii) after “11(4)” insert “; or
      - (b) order under section 22(1)(a) which removes from Part I of Schedule 2 any bird referred to in paragraph (b) of subsection (2);”.
- (7) In Schedule 2, Part I (birds which may be killed or taken outside the close season)—
  - (a) before the entries relating to the bird with the common name “Mallard” insert in columns 1 and 2 the following entries—

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“Grouse, Black

Tetrao tetrix

Grouse, Red

Lagopus lagopus scoticus”

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- (b) after the entries relating to the bird with the common name “Moorhen” insert in columns 1 and 2 the following entries—

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“Partridge, Grey

Perdix perdix

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Partridge, Red-legged

*Alectoris rufa*

Pheasant, Common

*Phasianus colchicus*”,

(c) after the entries relating to the bird with the common name “Pochard” insert in columns 1 and 2 the following entries—

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“Ptarmigan

*Lagopus mutus*”,

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(8) In Schedule 2, after Part I insert—

#### “PART IA

EXCEPTION: BIRDS INCLUDED IN PART I WHICH MAY NOT  
BE KILLED OR TAKEN ON SUNDAYS OR CHRISTMAS DAY

<i>Common name</i>	<i>Scientific name</i>
Coot	<i>Fulica atra</i>
Duck, Tufted	<i>Aythya fuligula</i>
Gadwall	<i>Anas strepera</i>
Goldeneye	<i>Bucephala clangula</i>
Goose, Canada	<i>Branta canadensis</i>
Goose, Greylag	<i>Anser anser</i>
Goose, Pink-footed	<i>Anser brachyrhynchus</i>
Mallard	<i>Anas platyrhynchos</i>
Moorhen	<i>Gallinula chloropus</i>
Pintail	<i>Anas acuta</i>
Plover, Golden	<i>Pluvialis apricaria</i>
Pochard	<i>Aythya ferina</i>
Shoveler	<i>Anas clypeata</i>
Snipe, Common	<i>Gallinago gallinago</i>
Teal	<i>Anas crecca</i>
Wigeon	<i>Anas penelope</i>
Woodcock	<i>Scolopax rusticola</i> ”.

#### Commencement Information

**I2** [S. 3](#) in force at 29.6.2011 by [S.S.I. 2011/279](#), [art. 2\(1\)\(b\)](#)

#### 4 Areas of special protection for wild birds

(1) The 1981 Act is amended as follows.

- (2) Section 3 (areas of special protection) is repealed.
- (3) In section 4 (exceptions to sections 1 and 3)—
  - (a) for the title, substitute “ Further exceptions to s. 1 ”,
  - (b) in subsection (1) the words “or in any order made under section 3” are repealed,
  - (c) in subsections (2) and (3) the words “or any order made under section 3” are repealed.
- (4) In section 16 (power to grant licences)—
  - (a) in subsection (1) the words “and orders under section 3” are repealed,
  - (b) in subsection (2) for “and orders under section 3 do” substitute “ does ”.
- (5) In section 26 (regulations, orders, notices etc.)—
  - (a) in subsection (2) “3,” is repealed,
  - (b) in subsection (4)(a) the words from “ , except” to “3,” are repealed.

**Commencement Information**

**I3** S. 4 in force at 1.1.2012 by S.S.I. 2011/433, art. 2(1)(a)

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

- (1) The 1981 Act is amended as follows.
- (2) In section 2—
  - (a) in subsection (4) (close seasons), for “this section and section 1” substitute “ section 1, this section and section 6 ”,
  - (b) in subsection (6) (period of special protection forms part of close season), for “this section and section 1” substitute “ section 1, this section and section 6 ”.
- (3) In section 6 (sale etc. of live or dead wild birds, eggs etc.)—
  - (a) in subsection (1)(a)—
    - (i) the words from “other” to “3” are repealed,
    - (ii) after “egg” where it second occurs insert “other than—
      - (i) a bird included in Part I of Schedule 3 (see also subsection (5));
      - (ii) a bird included in Part 1A of that Schedule to which subsection (1A) applies; or
      - (iii) an egg to which subsection (1B) applies or any part of such an egg”,
  - (b) after subsection (1) insert—

“(1A) This subsection applies to a bird which—

    - (a) was bred in captivity and remained in captivity or a place where it was reared;
    - (b) was a wild bird for the purposes of section 1 (see section 1(6)) and was taken by a person who had a legal right to take such a bird or a person with permission, from a person who had a

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right to give permission, to take such a bird outside the close season for the bird; or

- (c) was such a wild bird of the following type and was taken by a person with such right or permission during the period of 28 days which commences with the first day of its close season—
  - (i) a partridge included also in Part I of Schedule 2; or
  - (ii) a pheasant included also in that Part.

(1B) This subsection applies to the following eggs—

- (a) an egg of a bird included in Part IA of Schedule 3 to which subsection (1A) applies; or
- (b) an egg of a bird included in Part IA of Schedule 3 to which that subsection does not apply if the egg was taken—
  - (i) outside the close season for the bird or during the period of 28 days commencing with the first day of its close season; and
  - (ii) by a person who had a legal right to take such a bird or a person with permission, from a person who had a right to give permission, to take such a bird.”
- (c) in subsection (2)(a)—
  - (i) after “Part II” insert “, IIA ”,
  - (ii) after “Schedule 3” insert “ (see also subsections (5B) and (6)) ”,
- (d) for subsection (5) substitute—

“(5) Any reference in this section to any bird included in Part I of Schedule 3 is a reference to any bird included in that Part which—

- (a) was bred in captivity;
- (b) has been ringed or marked in accordance with regulations made by the Scottish Ministers; and
- (c) has not been lawfully released or allowed to escape from captivity as part of a re-population or re-introduction programme.

(5A) Regulations made for the purposes of subsection (5)(b) may make different provision for different birds or different provisions of this section.”,

- (e) after subsection (5A) (as inserted by paragraph (d)) insert—

“(5B) Any reference in this section to any bird included in Part IIA of Schedule 3 is a reference to any bird included in that Part which was killed outside the close season for the bird by a person who had a legal right to kill such a bird or permission, from a person who had a right to give permission, to kill such a bird.”,

- (f) for subsection (6), substitute—

“(6) Any reference in this section to any bird included in Part III of Schedule 3 is a reference, during the period commencing with 1st September in any year and ending with 28th February of the following year, to any bird included in that Part.”.

- (4) In Schedule 3 (birds which may be sold)—

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(a) after Part I insert—

**“PART IA**

ALIVE IF TAKEN IN CAPTIVITY OR BY CERTAIN PERSONS OUTSIDE  
CLOSE SEASON OR DURING FIRST 28 DAYS OF CLOSE SEASON

<i>Common name</i>	<i>Scientific name</i>
Grouse, Red	Lagopus lagopus scoticus
Mallard	Anas platyrhynchos
Partridge, Grey	Perdix perdix
Partridge, Red-legged	Alectoris rufa
Pheasant, Common	Phasianus colchicus”,

(b) after Part II insert—

**“PART IIA**

DEAD IF KILLED OUTSIDE CLOSE SEASON BY CERTAIN PERSONS

<i>Common name</i>	<i>Scientific name</i>
Coot	Fulica atra
Duck, Tufted	Aythya fuligula
Grouse, Black	Tetrao tetrix
Grouse, Red	Lagopus lagopus scoticus
Mallard	Anas platyrhynchos
Partridge, Grey	Perdix perdix
Partridge, Red-legged	Alectoris rufa
Pheasant, Common	Phasianus colchicus
Pintail	Anas acuta
Plover, Golden	Pluvialis apricaria
Pochard	Aythya ferina
Ptarmigan	Lagopus mutus
Shoveler	Anas clypeata
Snipe, Common	Gallinago gallinago
Teal	Anas crecca
Wigeon	Anas penelope
Woodcock	Scolopax rusticola”,

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- (c) in Part III (birds which may be sold dead from 1st September to 28th February), the entries relating to birds with the following common names are repealed—

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Coot

Duck, Tufted

Mallard

Pintail

Plover, Golden

Pochard

Shoveler

Snipe, Common

Teal

Wigeon

Woodcock.

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**Commencement Information**

**I4** [S. 5](#) in force at 29.6.2011 by [S.S.I. 2011/279](#), [art. 2\(1\)\(c\)](#)



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