



# Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

## PART 2

### WILDLIFE UNDER THE 1981 ACT

#### *Non-native species etc.*

#### **15 Non-native species etc.: code of practice**

After section 14B (notification of presence of invasive animals or plants etc.) of the 1981 Act insert—

##### **“14C Non-native species etc.: code of practice**

- (1) The Scottish Ministers may make a code of practice for the purpose of providing practical guidance in respect of—
  - (a) the application of any of sections 14, 14ZC, 14A and 14B;
  - (b) the application of any order made under any of those sections;
  - (c) species control agreements;
  - (d) species control orders;
  - (e) licences granted under section 16(4)(c).
- (2) A code of practice may, in particular, provide guidance on—
  - (a) how Scottish Natural Heritage, the Scottish Environment Protection Agency, the Forestry Commissioners and the Scottish Ministers should co-ordinate the way in which they exercise their respective functions in relation to animals or plants which are outwith their native range;
  - (b) which species, sub-species, varieties or races of animal or plant, or hybrids of animals or plants, are considered to be particular types of animals or plants for the purposes of—
    - (i) this section;
    - (ii) section 14, 14ZC, 14A or 14B;

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- (iii) any order made under any of those sections;
  - (iv) species control agreements;
  - (v) species control orders;
  - (vi) the code;
  - (c) the native range of any type of animal or plant;
  - (d) the circumstances in which any type of animal is considered to be—
    - (i) in captivity; or
    - (ii) under the control or otherwise of a person at a place outwith its native range;
  - (e) the circumstances in which a type of plant is considered to be growing in the wild outwith its native range, and conduct that would cause any type of plant to grow in the wild;
  - (f) the circumstances in which a type of invasive animal or plant is considered to be kept in a person's possession or under a person's control;
  - (g) which types of animals or plants are invasive and the circumstances (if any) in which any such type of animal or plant is not considered to be invasive;
  - (h) best practice (where permitted) for—
    - (i) keeping animals of any type which are invasive or which are kept at a place from which they may not be put outwith the control of any person;
    - (ii) keeping plants of any type which are invasive or which are kept at a place outwith their native range;
    - (iii) releasing animals of any type from captivity; and
    - (iv) planting, or otherwise causing to grow, any type of plant in the wild;
  - (i) best practice for—
    - (i) containing, capturing or killing animals of any type which are outwith the control of any person and which are—
      - (A) at a place outwith their native range; or
      - (B) animals of a type specified in an order made under section 14(1)(a)(ii);
    - (ii) containing, uprooting or destroying plants of any type which are growing in the wild outwith their native range; and
    - (iii) transferring animals or plants of any type which are not permitted to be kept by virtue of section 14ZC into the custody of Scottish Natural Heritage or any other person (and for keeping such animals or plants prior to the transfer);
  - (j) the making and content of species control agreements;
  - (k) the making, content of and enforcement of species control orders.
- (3) The Scottish Ministers may revoke, replace or revise a code of practice.
- (4) The first code of practice, and any replacement code of practice, made under this section—
- (a) requires to be laid before, and approved by resolution of, the Scottish Parliament; and

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- (b) comes into effect on such date after approval under paragraph (a) as is specified in the code.
- (5) Any revision to a code of practice (or revocation of a code of practice which is not being replaced) must—
  - (a) be laid before the Scottish Parliament; and
  - (b) specify the date on which it is to come into effect (such date to be at least 40 days after it is so laid, disregarding any period during which the Parliament is dissolved or in recess).
- (6) The Scottish Parliament may, before any such revision or revocation comes into effect, resolve that it is not to come into effect.
- (7) The Scottish Ministers must publish a code of practice (or any replacement or revision) made under this section no later than the day before the code (or replacement or revision) is to come into effect.
- (8) Before making, revoking, replacing or revising a code of practice, the Scottish Ministers must consult—
  - (a) Scottish Natural Heritage; and
  - (b) any other person appearing to them to have an interest in the code.
- (9) A person's failure to comply with a provision of a code of practice—
  - (a) does not of itself render the person liable to proceedings of any sort; but
  - (b) may be taken into account in determining any question in any such proceedings.
- (10) In any proceedings for an offence under section 14, 14ZC, 14A, 14B or 14K—
  - (a) failure to comply with a relevant provision of a code of practice may be relied upon as tending to establish liability;
  - (b) compliance with a relevant provision of a code of practice may be relied upon as tending to negative liability.”.

**Commencement Information**

**II** S. 15 in force at 1.1.2012 by S.S.I. 2011/433, art. 2(1)(d)

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