



Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

PART 2

WILDLIFE UNDER THE 1981 ACT

Liability in relation to certain offences by others

24 Liability in relation to certain offences by others

After section 18 of the 1981 Act insert—

“18A Vicarious liability for certain offences by employee or agent

- (1) This subsection applies where, on or in relation to any land, a person (A) commits a relevant offence while acting as the employee or agent of a person (B) who—
 - (a) has a legal right to kill or take a wild bird on or over that land; or
 - (b) manages or controls the exercise of any such right.
- (2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In any proceedings under subsection (2), it is a defence for B to show—
 - (a) that B did not know that the offence was being committed by A; and
 - (b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.
- (5) For the purposes of subsection (1)(b), management or control of the exercise of a right to kill or take any wild bird on or over land includes in particular management or control of any of the following—

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- (a) the operation or activity of killing or taking any such birds on or over that land;
- (b) the habitat of any such birds on that land;
- (c) the presence on or over that land of predators of any such birds;
- (d) the release of birds from captivity for the purpose of their being killed or taken on or over that land.

(6) In this section and section 18B, “a relevant offence” is—

- (a) an offence under—
 - (i) section 1(1), (5) or (5B);
 - (ii) section 5(1)(a) or (b); or
 - (iii) section 15A(1); and
- (b) an offence under section 18 committed in relation to any of the offences mentioned in paragraph (a).

18B Liability where securing services through another

(1) This subsection applies where, on or in relation to any land—

- (a) a person (A) commits a relevant offence;
- (b) at the time the offence is committed, A is providing relevant services for a person (B); and
- (c) B—
 - (i) has a legal right to kill or take a wild bird on or over that land;
or
 - (ii) manages or controls the exercise of any such right.

(2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In any proceedings under subsection (2), it is a defence for B to show—

- (a) that B did not know that the offence was being committed by A; and
- (b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.

(5) For the purposes of subsection (1)(b), A is providing “relevant services” for B—

- (a) if A manages or controls any of the following—
 - (i) the operation or activity of killing or taking any wild birds on or over that land;
 - (ii) the habitat of any such birds on that land;
 - (iii) the presence on or over that land of predators of any such birds;
 - (iv) the release of birds from captivity for the purpose of their being killed or taken on or over that land; and
- (b) whether A is providing the services—
 - (i) by arrangement between A and B; or

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

- (ii) by arrangement with or as employee or agent of any other person (C) who is providing or securing the provision of relevant services for B.
- (6) For the purposes of subsection (5)(b)(ii), C is providing or securing the provision of relevant services for B if C manages or controls any of the things mentioned in sub-paragraphs (i) to (iv) of subsection (5)(a).”.