



Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

PART 2

WILDLIFE UNDER THE 1981 ACT

Non-native species etc.

14 Non-native species etc.

- (1) The 1981 Act is amended as follows.
- (2) In section 14 (introduction of new species etc.)—
 - (a) for subsections (1) to (2) substitute—
 - “(1) Subject to the provisions of this Part, any person who—
 - (a) releases, or allows to escape from captivity, any animal—
 - (i) to a place outwith its native range; or
 - (ii) of a type the Scottish Ministers, by order, specify; or
 - (b) otherwise causes any animal outwith the control of any person to be at a place outwith its native range,is guilty of an offence.
 - (2) Subject to the provisions of this Part, any person who plants, or otherwise causes to grow, any plant in the wild at a place outwith its native range is guilty of an offence.
 - (2A) Subsection (1) does not apply to the following animals where those animals are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting—
 - (a) common pheasant;
 - (b) red-legged partridge.
 - (2B) The Scottish Ministers may, by order, specify—

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- (a) other types of animals to which subsection (1)(a)(i) or (1)(b) does not apply; and
 - (b) types of plants to which subsection (2) does not apply.
- (2C) The Scottish Ministers may, by order, disapply subsection (1) or (2) in relation to—
- (a) any person specified in the order;
 - (b) any conduct undertaken for the purposes of any enactment (including any enactment contained in or made under an Act of the Scottish Parliament) so specified; or
 - (c) any conduct authorised by, under or in pursuance of any such enactment.
- (2D) An order under subsection (1)(a)(ii), (2B) or (2C) may make different provision for different cases and, in particular, for—
- (a) different types of animal or plant;
 - (b) different circumstances or purposes;
 - (c) different persons;
 - (d) different times of the year; and
 - (e) different areas or places.”,
- (b) in subsection (3), for “prove” substitute “show”,
 - (c) subsections (5) and (6) are repealed.
- (3) After section 14ZB (codes of practice in connection with invasive non-native species: England and Wales) insert—

“14ZC Prohibition on keeping etc. of invasive animals or plants

- (1) Subject to the provisions of this Part, any person who keeps, has in the person’s possession, or has under the person’s control—
- (a) any invasive animal of a type which the Scottish Ministers, by order, specify; or
 - (b) any invasive plant of a type so specified,
- is guilty of an offence.
- (2) An order under subsection (1) may make different provision for different cases and, in particular, for—
- (a) different types of invasive animal or invasive plant;
 - (b) different circumstances or purposes;
 - (c) different persons;
 - (d) different times of the year; and
 - (e) different areas or places.
- (3) Subject to subsection (4), it is a defence to a charge of committing an offence under subsection (1) to show that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (4) Where the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged must not, without leave of the court, be entitled to rely on the defence unless, within a period ending 7 days before the hearing,

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the person has served on the prosecutor a notice giving such information or assisting in the identification of the other person as was then in the person's possession.

- (5) The Scottish Ministers may, in an order under subsection (1), make provision for or in connection with the compensation of persons who, at the time of the coming into force of the order, may no longer keep, have in their possession or have under their control, an animal or plant.”
- (4) In section 14A (prohibition on sale etc. of certain animals or plants)—
- (a) in the title, for “certain” substitute “invasive”,
 - (b) for subsection (1) substitute—
 - “(1) This section applies to—
 - (a) any type of invasive animal; or
 - (b) any type of invasive plant, - the Scottish Ministers, by order, specify.”,
 - (c) for subsection (3) substitute—
 - “(3) An order under subsection (1) may make different provision for different cases and, in particular, for—
 - (a) different types of invasive animal or invasive plant;
 - (b) different circumstances or purposes;
 - (c) different persons;
 - (d) different times of the year; and
 - (e) different areas or places.”.
- (5) For section 14B (guidance: non-native species) substitute—

“14B Notification of presence of invasive animals or plants etc.

- (1) The Scottish Ministers may, by order, make provision about the notification of the presence of—
- (a) invasive animals; or
 - (b) invasive plants,
- at any specified place outwith their native range where persons are, or become, aware of the presence of such animals or plants.
- (2) An order under subsection (1) may make provision for, or in connection with—
- (a) the persons (or types of persons) who must make a notification;
 - (b) the circumstances in which a notification must be made;
 - (c) the times of the year when a notification must be made;
 - (d) the persons to whom a notification must be made;
 - (e) the form and method of any notification; and
 - (f) the period within which any notification must be made.
- (3) An order under subsection (1) may require a person (or type of person) to make a notification only if the Scottish Ministers consider that the person (or that type of person) has or should have knowledge of, or is likely to encounter, the invasive animal or invasive plant to which the order relates.

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- (4) An order under subsection (1) may make different provision for different cases and, in particular, for—
- (a) different types of invasive animal or invasive plant;
 - (b) different circumstances or purposes;
 - (c) different persons;
 - (d) different times of the year; and
 - (e) different areas or places.
- (5) A person who, without reasonable excuse, fails to make a notification in accordance with the requirements of an order made under subsection (1) is guilty of an offence.”.

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;
 - (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;

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- (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
 - (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.

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- (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.”.

16 Species control orders etc.

After section 14C of the 1981 Act (non-native species etc.: code of practice) (inserted by section 15) insert—

“14D Power to make species control orders

- (1) A relevant body may make an order (a “species control order”) in respect of premises where—
 - (a) it is satisfied of the presence on the premises of—
 - (i) an invasive animal at a place outwith its native range; or
 - (ii) an invasive plant at a place outwith its native range; and
 - (b) any of subsections (2) to (4) applies.
- (2) This subsection applies where—
 - (a) the relevant body has offered to enter into an agreement with the owner or, as the case may be, occupier of the premises to control or eradicate—
 - (i) invasive animals outwith their native range; or
 - (ii) invasive plants outwith their native range,
 on the premises (referred to in this section as a “species control agreement”);
 - (b) 42 days have elapsed since the date of the offer; and
 - (c) the owner or occupier has refused or otherwise failed to enter into the agreement.
- (3) This subsection applies where—
 - (a) a person has entered into a species control agreement with the relevant body; and
 - (b) the person has failed to comply with the terms of the agreement.

- (4) This subsection applies where the relevant body has failed to ascertain the name or address of any owner or occupier of the premises (having made reasonable efforts to do so) and accordingly has not been able to offer to enter into a species control agreement.
- (5) Subsection (4) does not apply unless—
 - (a) the relevant body has given notice in accordance with subsection (6) stating that it wishes to offer to enter into a species control agreement;
 - (b) 48 hours have passed since the notice was given; and
 - (c) no owner or occupier of the premises has identified themselves to the relevant body.
- (6) A notice under this subsection must be addressed to “The owners and any occupiers” of the premises (describing it) and a copy of it must be affixed to some conspicuous object on the premises (in so doing the relevant body is to be treated as having provided notice to each owner or occupier whose name and address is unknown).

14E Emergency species control orders

- (1) Where a relevant body considers that the making of a species control order is urgently necessary, the relevant body may, despite section 14D(1)(b), make a species control order whether or not any of subsections (2) to (4) of section 14D apply (such an order is referred to in this Part as an “emergency species control order”).
- (2) An emergency species control order expires 49 days after it is made.

14F Content of species control orders

- (1) A species control order must—
 - (a) describe the premises to which it relates;
 - (b) be accompanied by a map on which the premises to which it relates are delineated;
 - (c) specify the type of invasive animal or plant in question;
 - (d) specify—
 - (i) any operations which are to be carried out on the premises for the purpose of controlling or eradicating the type of invasive animal or plant in question;
 - (ii) the person who is to carry out the operations; and
 - (iii) how and when the operations are to be carried out;
 - (e) specify any operations which must not be carried out on the premises (referred to in this Part as “excluded operations”);
 - (f) specify the date on which the order is to come into effect and the period for which it is to have effect; and
 - (g) set out the circumstances in which an appeal may be made under section 14H against either the decision to make the order or the terms of the order.
- (2) A species control order—

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- (a) may provide for the making of payments by the relevant body making the order;
 - (b) other than an emergency species control order, may provide for the making of payments by the owner or occupier of the premises to which the order relates,
- to any person in respect of reasonable costs incurred by a person carrying out an operation under the order.

14G Notice of species control orders

- (1) A relevant body making a species control order must give notice of the making of the order—
 - (a) to the owner and any occupier of the premises to which the order relates; and
 - (b) where the relevant body is a body other than the Scottish Ministers, to the Scottish Ministers.
- (2) Notice must—
 - (a) be in writing;
 - (b) specify the relevant body’s reasons for making the order;
 - (c) attach a copy of the order; and
 - (d) where the order is an emergency species control order, state that fact.

14H Appeals in connection with species control orders

- (1) Any owner or occupier of premises to which a species control order relates may appeal to the sheriff if aggrieved by—
 - (a) a decision of a relevant body to make the species control order; or
 - (b) the terms of such an order.
- (2) An appeal under subsection (1) must be lodged not later than 28 days after the date on which the relevant body gave notice to the appellant of the decision being appealed.
- (3) The sheriff may suspend any effect of an emergency species control order pending the determination of an appeal.
- (4) The sheriff must determine an appeal under subsection (1) on the merits rather than by way of review and may do so by—
 - (a) affirming the order in question;
 - (b) directing the relevant body to amend the order in such manner as the sheriff may specify;
 - (c) directing the relevant body to revoke the order; or
 - (d) making such other order as the sheriff thinks fit.
- (5) A decision of the sheriff on appeal is final except on a point of law.

14I Coming into effect of species control orders

Unless a species control order specifies a later date under section 14F(1)(f), such an order has effect from—

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- (a) in the case where an order is an emergency species control order, the giving of notice in accordance with section 14G;
- (b) in any other case—
 - (i) the expiry of the time limit for appealing against the decision to make the order; or
 - (ii) where such an appeal is made, its withdrawal or final determination.

14J Review of species control orders

- (1) A relevant body which has made a species control order may, when it thinks fit, review the order prior to its expiry for the purposes of determining whether it should make an order revoking the order.
- (2) If, on completion of a review, the relevant body decides that the species control order should be revoked, it may make an order to that effect.
- (3) The making of an order to revoke a species control order does not prevent a relevant body subsequently making a species control order in relation to the same premises.

14K Offences in relation to species control orders

- (1) Any person who, without reasonable excuse, fails to carry out, in the manner required by a species control order, an operation which the person is required by the order to carry out is guilty of an offence.
- (2) Any person who intentionally obstructs any person from carrying out an operation required to be carried out under a species control order is guilty of an offence.
- (3) Any person who, without reasonable excuse, carries out, or causes or permits to be carried out, any excluded operation is guilty of an offence.

14L Enforcement of operations under species control orders

- (1) This section applies where a relevant body considers—
 - (a) that any operation required to be carried out by a species control order it has made has not been carried out within the period or by the date specified in it; or
 - (b) that any such operation has been carried out otherwise than in the manner required under the order.
- (2) The relevant body—
 - (a) may carry out the operation, or such further work as is necessary to ensure that it is carried out, in the manner required under the order;
 - (b) is not required to make any payment (and may recover any payments made) in pursuance of the species control order in relation to the operation in question; and
 - (c) may recover from the person whom the species control order required to carry out the operation any expenses reasonably incurred by it in doing so (less any payment which the relevant body is required to make

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in relation to the carrying out of the operation under the order by virtue of section 14F(2)(a)).

14M Species control orders: powers of entry

- (1) A person authorised in writing by a relevant body may enter any premises for any of the following purposes—
 - (a) to determine whether or not to offer to enter into a species control agreement with the owner or, as the case may be, occupier of the premises;
 - (b) to determine whether or not to make or revoke a species control order;
 - (c) to serve notice to an owner or occupier of premises in accordance with section 14D(5)(a) or 14G;
 - (d) to ascertain whether an offence under section 14K is being, or has been, committed in relation to an order made by the relevant body;
 - (e) to carry out an operation or other work in pursuance of section 14L(2)(a).
- (2) A person so authorised to enter premises may not demand admission as of right to any land which is occupied unless—
 - (a) the entry is for a purpose mentioned in subsection (1)(a) or (b) and at least 24 hours' notice of the intended entry has been given;
 - (b) the entry is for a purpose mentioned in subsection (1)(c) or (d); or
 - (c) the entry is for a purpose mentioned in subsection (1)(e) and at least 14 days' notice of the intended entry has been given.
- (3) Subsection (2) does not apply in relation to entry in connection with an emergency species control order.
- (4) Nothing in this section authorises any person to break any lock barring access to premises which the person is authorised to enter.

14N Species control orders: entry by warrant etc.

- (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 a relevant body to enter premises for a purpose mentioned in section 14M(1) and that—
 - (a) admission to the premises has been refused;
 - (b) such refusal is reasonably apprehended;
 - (c) the premises are unoccupied;
 - (d) the occupier is temporarily absent from the premises;
 - (e) the giving of notice under section 14M(2) would defeat the object of the proposed entry; or
 - (f) the situation is one of urgency,
 the sheriff or justice may grant a warrant authorising the person to enter premises (including lockfast places), if necessary using reasonable force.
- (2) In the cases of a warrant under subsection (1)(a) to (d), a sheriff or justice must not grant a warrant unless satisfied that notice of the intended entry has been given in the manner described in section 14M.
- (3) A warrant under this section—

- (a) may be executed without notice; and
 - (b) 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.
- (4) Any person authorised by a warrant to enter any premises must, if required to do so by the owner or occupier or anyone acting on the owner or occupier's behalf, show that person the warrant.
- (5) Any person authorised by a warrant to use reasonable force—
- (a) must be accompanied by a constable when doing so; and
 - (b) may not use force against an individual.

14O Species control orders: powers of entry: supplemental

- (1) Any person who exercises a power of entry to premises in accordance with section 14M or 14N may—
- (a) be accompanied by any other person; and
 - (b) take any machinery, other equipment or materials on to the premises, for the purpose of assisting the person in the exercise of that power.
- (2) A power specified in subsection (1) which is exercisable under a warrant is subject to the terms of the warrant.
- (3) Any person leaving any premises which have been entered in exercise of a power conferred by section 14M or a warrant granted under section 14N, being either unoccupied premises or premises from which the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as the person found the premises.
- (4) A relevant body must compensate any person who has sustained damage by reason of—
- (a) the exercise by a person authorised by the relevant body of any powers of entry conferred on the person by section 14M or a warrant granted under section 14N; or
 - (b) the failure of a person so authorised to perform the duty imposed by subsection (3),
- unless the damage is attributable to the fault of the person who sustained it.
- (5) Any dispute as to a person's entitlement to compensation, or to the amount of such compensation, is to be determined by arbitration.

14P Interpretation of sections 14 to 14O

- (1) This section applies to sections 14 to 14O only.
- (2) Any reference to the native range of an animal or plant, or a type of animal or plant, is a reference to the locality to which the animal or plant of that type is indigenous, and does not refer to any locality to which that type of animal or plant has been imported (whether intentionally or otherwise) by any person.
- (3) The native range of a hybrid animal or plant is any locality within the native range of both parents of the hybrid animal or plant.

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- (4) Any reference to an invasive animal or invasive plant, or type of such an animal or plant, is a reference to an animal or plant of a type which if not under the control of any person, would be likely to have a significant adverse impact on—
 - (a) biodiversity;
 - (b) other environmental interests; or
 - (c) social or economic interests.
- (5) Any reference to premises—
 - (a) includes reference to land (including lockfast places and other buildings), movable structures, vehicles, vessels, aircraft and other means of transport; but
 - (b) does not include reference to dwellings.
- (6) Any reference to a relevant body is a reference to—
 - (a) the Scottish Ministers;
 - (b) Scottish Natural Heritage;
 - (c) the Scottish Environment Protection Agency; or
 - (d) the Forestry Commissioners.
- (7) Any reference to an animal includes a reference to ova, semen and milt of the animal.
- (8) “Plant” includes fungi and any reference to a plant includes a reference to—
 - (a) bulbs, corms and rhizomes of the plant; and
 - (b) notwithstanding section 27(3ZA), seeds and spores of the plant.”.

17 Non-native species etc.: further provision

- (1) The 1981 Act is amended as follows.
- (2) In section 16 (power to grant licences), in subsection (4)(c), after “14” insert “, 14ZC”.
- (3) In section 21 (penalties, forfeitures etc.)—
 - (a) in subsection (1) after “13” insert “, 14B”,
 - (b) in subsection (4)—
 - (i) after “14” insert “, 14ZC”,
 - (ii) in paragraph (a), for “six” substitute “12”,
 - (c) after that subsection insert—

“(4ZA) Any person guilty of an offence under section 14K is liable—

 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding £40,000, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”,
 - (d) in subsection (6)(b) for “or 14A” substitute “, 14ZC, 14A, 14B or 14K”.
- (4) In section 22(1) (power to vary schedules)—
 - (a) in paragraph (b) the words “or Part I of Schedule 9” are repealed,
 - (b) in paragraph (c) the words “or Part II of Schedule 9” are repealed.

- (5) In section 24 (functions of GB conservation bodies), after subsection (4) insert—
- “(4A) The functions of Scottish Natural Heritage include the power to advise or assist—
- (a) another relevant body exercising functions under section 14L(2)(a); and
 - (b) a person authorised to enter premises under section 14M exercising functions under that section.”.

(6) In section 26 (regulations, orders, notices etc.)—

 - (a) in subsection (1), for “this Part” substitute “a provision of this Part other than section 14D”,
 - (b) in subsection (4)—
 - (i) for “this Part” substitute “a provision of this Part other than section 14D”,
 - (ii) in paragraph (a), after “2(6)” insert “, 14, 14ZC, 14A or 14B”,
 - (iii) in paragraph (b), after “section” insert “14, 14ZC, 14A, 14B”,
 - (c) after that subsection, insert—

“(4A) The Scottish Ministers may make an order under section 14, 14ZC or 14A only where they have consulted—

 - (a) Scottish Natural Heritage; and
 - (b) any other person appearing to them to have an interest in the making of the order.

(4B) Subsection (4A) does not apply where the Scottish Ministers consider it necessary to make the order urgently and without consultation.”.

(7) In section 70A (service of notices), after subsection (2) insert—

“(2A) Subsection (1)(cc) of the said section 271 shall not apply to a notice required to be served under section 14G.

(2B) Subsection (2) of the said section 271 shall not apply to a notice required to be served under section 14D(5)(a).”.

(8) Schedule 9 (animals and plants to which section 14 applies) is repealed.