



# Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

## PART 4

### OTHER WILDLIFE ETC.

#### *Protection of badgers*

#### **33 Protection of badgers**

- (1) The 1992 Act is amended as follows.
- (2) In section 1 (taking, killing or injuring badgers) after subsection (5) add—
  - “(6) A person is guilty of an offence if, except as permitted by or under this Act, he knowingly causes or permits to be done an act which is made unlawful by subsection (1) or (3) above.”.
- (3) In section 2 (cruelty) after subsection (2) add—
  - “(3) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.
- (4) In section 4 (selling and possession of live badgers)—
  - (a) the existing text becomes subsection (1),
  - (b) after that subsection add—
    - “(2) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.
- (5) In section 5 (marking and ringing)—
  - (a) the existing text becomes subsection (1),
  - (b) after that subsection add—

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“(2) A person is guilty of an offence if, except as permitted by or under this Act, the person knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.”.

(6) In section 10 (licences)—

- (a) in subsection (1) for “conservation body” substitute “authority”,
- (b) in subsection (2)—
  - (i) the words from the beginning to the second “licence” are repealed,
  - (ii) paragraphs (a) to (d) become paragraphs (g) to (j) of subsection (1),
- (c) in subsection (3)—
  - (i) the words from the beginning to the second “licence” are repealed,
  - (ii) the remaining words becomes paragraph (k) of subsection (1),
- (d) for subsection (4) substitute—

“(4) In this section “the appropriate authority” means the Scottish Ministers or such other person to whom the Scottish Ministers delegate power under section 10A below.”,

- (e) subsection (5) is repealed,
- (f) for subsection (6) substitute—

“(6) The Scottish Ministers must consult Scottish Natural Heritage before granting a licence under subsection (1) above.”,

- (g) subsection (7) is repealed,
- (h) in subsection (8), after the word “be” insert “modified or”,
- (i) in subsection (10), for “subsection (2)(a)” substitute “subsection (1)(g)”.

(7) After that section insert—

#### **“10A Delegation of licence-granting power: Scotland**

- (1) The Scottish Ministers may delegate their functions in relation to licences under section 10 above to—
  - (a) Scottish Natural Heritage; or
  - (b) a local authority (but only in relation to the purpose mentioned in section 10(1)(d)).
- (2) A delegation may be, to any degree, general or specific and may in particular relate to—
  - (a) a specific badger or badger sett;
  - (b) a particular licence or type of licence;
  - (c) a particular area.
- (3) Unless it specifies otherwise, a delegation relating to a particular type of licence includes the power to modify or revoke licences of that type that were granted before the delegation.
- (4) A delegation to—
  - (a) Scottish Natural Heritage under subsection (1)(a) above is to be made by written direction;
  - (b) a local authority under subsection (1)(b) above is to be made by order made by statutory instrument.

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- (5) A local authority which is delegated a function under subsection (1)(b) above must, before granting or modifying a licence, consult Scottish Natural Heritage.
  - (6) The Scottish Ministers may modify or revoke a direction under subsection (4) (a) above.
  - (7) Where a direction or order under subsection (4) above is revoked, any existing licence granted under the direction or order continues to have effect (unless the revoking direction or order provides otherwise).
  - (8) A statutory instrument containing an order under subsection (4)(b) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.
  - (9) Before making an order under subsection (4)(b) above, the Scottish Ministers must consult—
    - (a) the local authority to which functions are to be delegated under the order;
    - (b) Scottish Natural Heritage; and
    - (c) any other persons the Scottish Ministers consider are affected by the making of the order.
  - (10) The Scottish Ministers must give consideration to any proposals for the making by them of an order under subsection (4)(b) above with respect to any area which may be submitted to them by a local authority whose area includes that area.”.
- (8) In section 11A (attempts), in subsection (3)—
- (a) after “above” insert “or section 1(6) above”,
  - (b) after “consisting of” insert “or involving”,
  - (c) for “the accused” substitute “a person”.
- (9) In section 12 (penalties and forfeiture)—
- (a) in subsection (1)—
    - (i) for the words from the first “section” to the third “above” substitute “a provision mentioned in subsection (1ZA) below”,
    - (ii) after “section 5” insert “(1) or (2)”,
  - (b) after that subsection insert—

“(1ZA) The provisions referred to in subsection (1) above are—

    - (a) section 2(1)(d) above or section 2(3) above (in relation to an act made unlawful by section 2(1)(d) above); and
    - (b) section 3(1)(a) to (c) or (e) above or section 3(2) (in relation to an act made unlawful under section 3(1)(a) to (c) or (e) above).”
  - (c) in subsection (1A)—
    - (i) for the words from the first “section” to the third “above” substitute “a provision mentioned in subsection (1B) below”,
    - (ii) in paragraph (a)—
      - (A) for “six” substitute “12”,
      - (B) for “level 5 on the standard scale” substitute “the statutory maximum”,

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(d) after that subsection insert—

“(1B) The provisions referred in subsection (1A) above are—

- (a) section 1(1), (3) and (6);
- (b) section 2(1)(a) to (c) above and section 2(3) above (in relation to an act made unlawful by section 2(1)(a) to (c) above);
- (c) section 3(1)(d) above or section 3(2) above (in relation to an act made unlawful by section 3(1)(d) above); and
- (d) section 4(1) and (2) above.”.

(10) In section 12A (time limit for bringing summary proceedings), in subsection (1), for “section 1(1), 2, 3, 5” substitute “any of sections 1 to 5”.

(11) In section 13 (powers of court where dog used or present at commission of offence) after “1(1)” insert “or (6) (in relation to an act made unlawful by section 1(1))”.