

# **WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

#### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Wildlife and Natural Environment (Scotland) Bill introduced in the Scottish Parliament on 9 June 2010:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 52-PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE BILL – BACKGROUND AND OVERVIEW**

4. The Bill makes a range of provision about wildlife and the natural environment. It consists of six Parts and a schedule, which make provision as explained below.

5. The following expressions are used throughout these Notes:

“The 1946 Act” means the Hill Farming Act 1946;

“The 1981 Act” means the Wildlife and Countryside Act 1981;

“The 1992 Act” means the Protection of Badgers Act 1992;

“The 1996 Act” means the Deer (Scotland) Act 1996;

“The 2004 Act” means the Nature Conservation (Scotland) Act 2004;

“DCS” means the Deer Commission for Scotland, established under the 1996 Act and to be dissolved and its functions transferred to SNH on the commencement of section 1 of the Public Sector Reform (Scotland) Act 2010; and

“SNH” means Scottish Natural Heritage, established under the Natural Heritage (Scotland) Act 1991.

### **Part 1**

6. Part 1 contains defined expressions for the statutes amended by the Bill.

## **Part 2 – Wildlife under the 1981 Act**

7. Part 2 of the Bill makes amendments to Part 1 of the Wildlife and Countryside Act 1981. Part 1 of that Act regulates the taking, killing, sale and possession of all wild birds and of the species of animals and plants which are specified in Schedules to the Act. Certain other species of animals and plants are protected separately under the Conservation (Natural Habitats & c.) Regulations 1994 (S.I.1994/2716). Part 1 of the 1981 Act also prohibits certain methods of taking and killing birds and animals and regulates the use of other methods (including snares). It also regulates the introduction of non-native species. Most activities prohibited under Part 1 are capable of being licensed for certain purposes under section 16 of that Act.

8. The amendments in Part 2 of the Bill add provisions about the protection and poaching of game species to the 1981 Act, abolish “areas of special protection” established under section 3 of that Act, impose restrictions on the use of snares to catch animals, replace the regime for controlling invasive species, amend and enable the delegation of, licensing functions under the Act and make consequential changes to the powers of wildlife inspectors.

## **Part 3 - Deer**

9. Part 3 of the Bill amends the Deer (Scotland) Act 1996. Part I (sections 1 to 4) of the 1996 Act places a duty on DCS to further the conservation, control and sustainable management of deer. Part II of that Act (sections 5 to 16) provides for the setting of close seasons and creates mechanisms for DCS to work with landowners to manage deer numbers. Part III (sections 17 to 26) of that Act creates offences in relation to deer, including poaching offences which make it an offence to kill deer without the legal right to do so. Part IV (sections 27 to 48) regulates venison dealing and contains enforcement and other miscellaneous provisions.

10. The functions of DCS under the 1996 Act are to be transferred to SNH by section 1 of the Public Services Reform (Scotland) Act 2010. Schedule 1 to the 2010 Act makes a large number of consequential amendments to the 1996 Act. These have been taken into account in drafting the Bill, which refers to SNH throughout. The same approach has been taken in these Notes.

11. Part 3 of the Bill amends the 1996 Act to change the provisions which allow certain occupiers of land to shoot deer during close seasons. It requires SNH to prepare a code of practice in relation to deer management. It revises the purposes for and the circumstances in which SNH can exercise powers in relation to control agreements, control schemes and emergency measures to manage deer. It also enables Ministers to make provision by order to require persons who shoot deer to be registered as competent to do so. Such orders may also be used to make consequential changes to the arrangements for collecting data about numbers of deer killed (known as “cull returns”).

## **Part 4 – Other wildlife etc.**

12. Section 27 of the Bill amends the Protection of Badgers Act 1992. The 1992 Act prohibits a range of activities in relation to badgers, including the killing, taking and sale of badgers and disturbance to their setts. Some of these activities can be licensed for certain purposes. The Bill creates a number of new offences under the 1992 Act and provides for certain offences to be triable on indictment as well as under summary procedure. It also makes provision for the delegation of licensing functions under the 1992 Act.

13. Section 28 of the Bill amends the Hill Farming Act 1946. Sections 23 to 27 of the 1946 Act regulate the practice of muirburn in Scotland, which is defined in section 39 of that Act as including “setting fire to or burning heath or muir”. The Bill replaces periods during which muirburn is prohibited with a positive season during which it is permitted. It also expands the power to amend muirburn seasons by order and provides for a new licensing regime in respect of out of season muirburn. Finally it reforms requirements to inform neighbours of intentions to make muirburn.

### **Part 5 – Sites of Special Scientific Interest**

14. Part 5 of the Bill amends the 2004 Act to make provision for the combination and denotification of sites of special scientific interest (“SSSIs”), operations which affect SSSIs and alternative procedure for securing reparation to SSSIs following illegal damage.

### **Part 6 - General**

15. Part 6 of the Bill contains general provision on Crown application and commencement.

### **Schedule**

16. The schedule contains repeals. These include the repeals of the 18<sup>th</sup> and 19<sup>th</sup> century statutes known as the Game Acts, which set close seasons for game birds, create poaching offences and establish requirements for game licences. The close seasons and poaching offences are replaced by provision under Part 2 of the Bill. The game licensing regime is repealed and not replaced, although it will be possible to grant licences in relation to game species for other purposes under the 1981 Act.

## **THE BILL – SECTION BY SECTION**

### **PART 1 – DEFINITIONS**

17. Part 1 consists of section 1, which contains defined expressions used throughout the Bill.

### **PART 2 – WILDLIFE UNDER THE 1981 ACT**

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

18. This section amends definitions in section 27(1) of the 1981 Act. Paragraph (b) amends the definition of “wild bird” to remove the exception in relation to game birds. This means that game birds (pheasants, partridges, red and black grouse and ptarmigan) will be covered by the offences in the 1981 Act which relate to wild birds. The amendment should be read with section 21 and the schedule, which repeal the older legislation which restricts the killing, taking and sale of game birds. Paragraph (a) is consequential on the other amendments to the 1981 Act. It repeals the definition of “game bird”, a term which is not used in the amended provisions in relation to wild birds.

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

19. This section amends sections 1 and 2 of and Schedule 2 to the 1981 Act. Section 1 of the 1981 Act creates offences of killing, taking and injuring any wild bird. Section 2 of that Act creates exceptions to those offences, which allow certain species (those listed in Schedule 2) to be taken and killed outside close seasons.

20. The amendment to section 1 ensures that the offences under that section will apply to partridges, pheasants, mallards and red grouse which are bred in captivity and released for shooting.

21. The amendments to section 2 and to Schedule 2 extend the exceptions to cover the game birds which are brought within the 1981 Act by virtue of the amendment to the definition of “wild bird” under section 2. The amendments set close seasons for those game birds. They also amend the exceptions so that these may only be relied on by people with a legal right (at common law or otherwise) to kill or take the birds. These amended exceptions replace the poaching offences in older legislation which relates to game birds and which is repealed by section 21 and the schedule.

22. Subsection (2) amends the italic heading of sections 1 to 8 of the 1981 Act (which relate to birds) to add a reference to poaching. The new heading takes account of the inclusion of poaching offences in the 1981 Act.

23. Subsection (3) amends section 1(6) of the 1981 Act. Section 1(6) of that Act excludes birds bred in captivity from the definition of “wild bird”. The amendment qualifies section 1(6) in two respects. First, to ensure that birds bred in captivity and lawfully released for conservation purposes are protected as wild birds after release. Second, to ensure that a captive bred mallard, grey or red-legged partridge, common pheasant or red grouse will be treated as a wild bird if it is no longer in captivity and not in a place in which it was reared. This subsection ensures that the birds that are most often bred in captivity for sporting purposes are covered by the offences under section 1 and the exceptions under section 2 of the 1981 Act when they are released.

24. Subsection (4)(a) to (c) amends section 2 of the 1981 Act, which creates exceptions to section 1 of the 1981 Act. The effect in the amendments is to provide that it is not an offence for a person to kill or take a bird listed on Part 1 of Schedule 2 to that Act outside the close season for that bird, provided that the person had the legal right to kill or take the bird, or had permission to do so. A legal right to kill or take wild birds may arise automatically under the common law (e.g. as a consequence of landownership), under a lease or another contract or under statute. Whether a person with a legal right to kill or take the bird has the authority to grant permission to someone else will depend on the nature of their legal right. The Bill does not alter legal rights to kill or take birds or confer new powers to grant permission to others. It remains an offence to take or kill any other wild bird which is not listed in Part 1 of Schedule 2, unless otherwise authorised by means of a licence issued under section 16 of the 1981 Act.

25. Subsections (4)(d) and (6) inserts a new Part 1A into Schedule 2 to the 1981 Act which lists the birds which are not to be killed or taken on Sundays or Christmas Day. The restriction in

relation to Sundays and Christmas Day does not apply to game birds (pheasants, partridges, red and black grouse and ptarmigan).

26. Subsection (4)(e) inserts new subsections (3A) to (3C) into section 2 of the 1981 Act. Subsections (3A) and (3B) provide that it is not an offence to take live mallard, partridge, pheasant or red grouse, or the eggs of those birds for breeding purposes during a period of 2 weeks after the start of the close season for those birds, provided that the person taking the birds or eggs has the legal right or permission to do so. This process is sometimes referred to as “catching up”. As with subsection (4)(e), the amendment does not alter legal rights to take birds or confer power to grant permission to others.

27. Subsection (3C) provides that catching up of mallards or mallards’ eggs is not permitted on the foreshore, below the high-water mark of ordinary spring tides.

28. Subsection (4)(f) amends section 2(4) of the 1981 Act to create close seasons for pheasant, grey and red-legged partridge, black grouse, red grouse and ptarmigan. The provision should be read with section 21 and the schedule, which repeals the close seasons set for those species under the Game (Scotland) Act 1772.

29. Subsection (5) amends Part 1 of Schedule 2 of the 1981 Act to add the game bird species (black grouse, red grouse, grey partridge, red-legged partridge, common pheasant, and ptarmigan) to the list of birds which may be killed or taken outside the close season.

#### **Section 4 – Areas of Special Protection**

30. Section 4 of the Bill repeals section 3 of the 1981 Act, which enabled the Scottish Ministers to declare areas of special protection for wild birds, their nests, and their young. Eight Scottish areas of special protection created by order under the Protection of Birds Act 1954 (where they are described as “bird sanctuaries”), which was repealed and re-enacted by the 1981 Act, will be abolished as a consequence of that repeal.

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

31. This section amends sections 2 and 6 of and Schedule 3 to the 1981 Act. Section 6 creates offences in relation to the sale of birds and their eggs. These offences are subject to exceptions which apply to certain species of bird which are listed in Schedule 3 to the Act.

32. The amendments to section 6 and Schedule 3 extend the exceptions to cover the sale of dead game birds (grouse, partridge, pheasant and ptarmigan) which are killed legally outside the close season. These provisions should be read with section 21 and the schedule, which repeal older restrictions on the sale of game birds. The amendments to section 2(6) are consequential on these changes.

33. The amendments to section 6 and Schedule 3 also extend the exceptions in section 6 to permit the sale of live birds and eggs of species which are taken or collected in accordance with the “catching up” provisions in section 2(3A) to (3C), as inserted by section 3.

34. The amendments to Schedule 3 also remove the restrictions on selling certain birds between 28 February and 1 September by moving the species currently listed in Part III of Schedule 3 to a new Part of that Schedule.

35. Subsection (2) amends section 2(6) of the 1981 Act so that if the Scottish Ministers declare a period of special protection for a bird species, this period of special protection would be treated as part of the close season for the purposes of assessing whether it was an offence to sell a bird or egg of that species under section 6(5A) or (5B).

36. Subsections (3)(a) and (b) and (4)(a) deal with the sale of live birds and eggs. Subsection (3)(a) and (b) amends section 6(1) of the 1981 Act and inserts a new section 6(1A) and (1B), while subsection (4)(a) inserts a new Part IA into Schedule 3 of that Act. The effect is to allow birds and eggs of the species listed in the new Part of the Schedule (red grouse, grey partridge, red-legged partridge, common pheasant and mallard) to be sold alive if they are bred in and remain in captivity or if they taken legally outside close seasons or during the catching up period provided under section 2(3A) and (3B) (as inserted by section 3).

37. Subsection (3)(d) replaces section 6(5) of the 1981 Act with a new section 6(5) and (5A). The effect of the changes made by the subsection is that the offence in section 6(1) of that Act applies to birds bred in captivity and lawfully released for conservation purposes. Section 6(5A) re-enacts the enabling power in section 6(5) of the Act.

38. Subsections (3)(c) and (e) and (4)(b) and (c) amend provisions which deal with the sale of dead birds. They amend subsection (2) of section 6 of the 1981 Act, insert a new subsection (5B), insert a new Part IIA into Schedule 3 and repeal all the entries in Part III of that Schedule. The new Part IIA of Schedule 3 lists game species (grouse, partridge, pheasant and ptarmigan) as well as the species previously listed in Part III of the Schedule. The effect of the changes is to allow birds of all species listed in Part IIA to be sold dead at any time provided that they are killed outside the close season by someone with the legal right to do so.

39. Subsection (3)(f) makes a consequential amendment to section 6 of the 1981 Act. It replaces subsection (6) of that section to remove a redundant reference to Part II of Schedule 3.

### **Section 6 – Protection of wild hares etc.**

40. Section 6 inserts new sections 10A and 10B and Schedule 5A into the 1981 Act. These provisions set close seasons for wild mountain hares and brown hares and create related offences. The new sections are inserted by subsection (2) and the Schedule by subsection (5).

#### *Inserted section 10A of the 1981 Act*

41. Inserted section 10A of the 1981 Act sets close seasons and creates offences in relation to hares. Subsection (1) of that section specifies that it is an offence to intentionally or recklessly kill, injure or take any animal on Schedule 5A outside the close season. The species listed on Schedule 5A are the brown hare and the mountain hare.

42. Subsection (2) of new section 10A specifies separate close seasons for mountain hares and brown hares. The close seasons are 1 March to 31 July and 1 February to 30 September, respectively. Subsection (3) of new section 10A allows Scottish Ministers to vary these close seasons by order.

43. Subsections (4) to (7) of new section 10A allow periods of special protection to be set outside the close season for animals on Schedule 5A. The provisions are similar to the provisions for setting periods of special protection in respect of wild birds, under section 2(6) and (7) of the 1981 Act. Subsections (4) and (7) allow Ministers to set such periods by order for all or any part of Scotland, subject to compliance with the consultation requirements in subsection (5). Subsection (6) provides that a period of special protection has effect as if it was part of the close season. Section 6(3) of the Bill amends section 26(2) of the 1981 Act to provide that orders setting periods of special protection for animals under new section 10A(4) will not be subject to parliamentary procedure. Section 26(2) of the 1981 Act already makes similar provision for orders setting periods of special protection for wild birds.

44. Subsection (8) of new section 10A creates a presumption in relation to any offence under subsection (1) that the animal in question was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act and in new section 11E(2), as inserted by section 7 of the Bill.

*Inserted section 10B of the 1981 Act*

45. Inserted section 10B of the 1981 Act creates exceptions to the offences of killing, injuring or taking an animal during the close season under section 10A.

46. Subsection (1) of new section 10B provides a defence to the offence of killing an animal during its close season if the accused can show that the animal in question was too seriously disabled to recover. That defence will only apply if the disability to the animal was not caused by an unlawful act of the accused.

47. Subsection (2) of new section 10B provides a defence to the offence of taking an animal during its close season if the accused is able to show that the animal had been disabled and was taken for the purpose of tending it and releasing it once it had recovered. The defence can only be relied on by someone who, apart from the close season, had a legal right or permission to take the animal and if the disability to the animal had not been caused by an unlawful act of the accused.

48. Subsections (3) to (6) of new section 10B provide a defence to the offence of killing or injuring an animal during its close season. The defence can only be relied on by an “authorised person”, which is defined in section 27 of the 1981 Act to include the owner or occupier of the land involved and persons authorised by the local authority. The defence allows an authorised person to kill or injure an animal listed on Schedule 5A, in cases where subsections (4) and (5) do not apply and if he shows that the action was necessary to prevent serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.



49. Subsection (4) prevents an authorised person from relying on the defence if it became apparent in advance that it would be necessary to kill or take the animal and either the person failed to apply for an appropriate licence under section 16 of the Act as soon as practicable or a licence application had already been determined. Subsection (5) prevents an authorised person from relying on the defence if he failed to inform the licensing authority (the “appropriate authority” under section 16(9) of the 1981 Act) as soon as practicable after the animal was killed or injured.

### **Section 7 – Prevention of poaching: wild hares, rabbits etc.**

50. Section 7 inserts new sections 11E and 11F and Schedule 6A into the 1981 Act (sections 11A to 11D being inserted into the 1981 Act by section 13 of the Bill, which relates to snaring). These provisions create offences in relation to killing and taking hares and rabbits without a legal right to do so. This type of offence is more commonly described as poaching. The provisions should be read with section 21 and the schedule, which repeals the older legislation which creates poaching offences in relation to hares and rabbits (which are referred to in that context as “ground game”).

51. Subsection 7(3) inserts a new section 11E into the 1981 Act. Section 11E(1) creates an offence of intentionally or recklessly killing injuring or taking a wild animal listed in Schedule 6A of the Act. Schedule 6A is inserted by subsection (4) and lists rabbits, mountain hares and brown hares. Section 11E(2) creates a presumption that the animal in question in relation to an offence under section 11E(1) was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act and section 10A(8), as inserted by section 6 of the Bill.

52. New section 11F of the 1981 Act creates defences to the offence of taking, killing or injuring an animal listed in Schedule 6A. Section 11F(1) allows a person with a legal right or permission to kill or take the animal. A legal right to kill or take wild animals may arise automatically under the common law (e.g. as a consequence of landownership), under a lease or another contract or under statute. Whether a person with a legal right to kill or take the bird has the authority to grant permission to someone else will depend on the nature of their legal right. The Bill does not alter legal rights to kill or take animals or confer new powers to grant permission to others.

53. Section 11F(2) provides that it is not an offence to kill an animal listed in Schedule 6A if the accused shows that the animal in question was so seriously disabled that there was no reasonable chance of its recovering and that the animal was not disabled by any unlawful act of the accused.

### **Section 8 – Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully**

54. Subsection 8 inserts a new section 11G into the 1981 Act. Section 11G(1) makes it an offence to possess, control, sell or offer to sell, possess or transport for the purpose of selling any wild animal or part of a wild animal which has been killed or taken in contravention of section 10A or 11E.

55. Section 11F(2) provides a defence if the accused shows he had a reasonable excuse.

56. 11F(3) creates a presumption that the animal in question in relation to an offence under section 11F(1) was a wild animal. Similar presumptions apply in relation to offences under section 9 of the 1981 Act and sections 10A(8) and 11E(2), as inserted by sections 6 and 7 of the Bill.

### **Section 9 – Wild hares, rabbits etc.: licences**

57. Section 9 makes consequential amendments to section 16(3) of the 1981 Act which allow the activities covered by the offences at new sections 10A(1) (killing of animals listed on Schedule 5A in the close season) and 11E(1) (poaching of hares, rabbits etc.) to be licensed under that section.

### **Section 10 – Wild hares, rabbits etc.: power to vary Schedules to the 1981 Act and prescribe close season**

58. This section extends the enabling power in section 22 of the 1981 Act to allow the Scottish Ministers to add to or remove animals from the lists in new Schedules 5A and 6A by order. It also allows such orders to set close seasons for any animal added to Schedule 5A by order.

### **Section 11 – Wild hares and rabbits: miscellaneous**

59. Section 10 replaces section 12 of the 1981 Act with section 12YA and amends the title of Schedule 12 to clarify the content of Schedule 12. Schedule 12 concerns the protection from the noise of shooting hares and rabbits animals at night.

### **Section 12 – Single witness evidence in certain proceedings under the 1981 Act**

60. Section 12 amends section 19A of the 1981 Act to extend the admissibility of single witness evidence to cover offences in relation to the unlawful taking, killing or injuring of game birds (grouse, partridge, pheasant,) and wild hares and rabbits. The provision reflects the position under the Game Acts, which are repealed in the Schedule but which permitted conviction on the evidence of a single witness for offences in relation to game birds and ground game.

### **Section 13 - Snares**

61. Section 13 deals with the use of snares. Subsection (2) amends section 11 of the 1981 Act to insert a new subsection (1A). Subsection (3) inserts new sections 11A to 11D into that Act. As well as setting new requirements in relation to snaring, the amendments replace provisions in the Snares (Scotland) Order 2010 (S.S.I 2010/8), which set requirements about snare stops and anchors and checks of whether snares are free-running. The amendments also reorganise some existing provisions from section 11 into new sections 11B and 11C. These relate to inspecting snares and obtaining authorisation from landowners.

*Snares calculated to cause unnecessary suffering*

62. Inserted section 11(1A) of the 1981 Act sets out circumstances in which a snare is to be considered to be of a nature or set in a way calculated to cause unnecessary suffering for the purpose of the offence in section 11(1)(aa). It requires snares to be fitted with stops (subsection (1A)(a) and (b)), attached to the ground or an object to prevent them being dragged (subsection (1A)(d)) and not set in a place which is likely to cause an animal to become suspended or drown (subsection (1A)(e)). These provisions replace those in the Snares (Scotland) Order 2010.

*Training, identification numbers and tags*

63. Inserted section 11A of the 1981 Act requires people who set snares to be trained and to label their snares. It does so by requiring anyone who sets a snare to have an identification number (section 11A(1)). Failure to do so is an offence (section 11A(5)). Such numbers must be obtained from the police (section 11A(3) and (4)) and can only be issued to persons who have been trained to set snares (section 11A(4)(b)).

64. Identification numbers must be shown on tags which must be attached to snares (section 11A(2)). Tags must also indicate whether a snare is intended to catch brown hares or rabbits, or foxes. It is an offence to set or use a snare without a compliant tag (section 11A(6)). Section 11A(8) enables the Scottish Ministers to specify training requirements and other elements of the identification number and tagging regime by order.

65. Inserted section 11B of the 1981 Act requires a person who sets a snare to ensure that it is inspected at least every 24 hours to see whether there is an animal caught in the snare and whether the snare is free-running (as defined in section 11B(4)). If an animal is found to be caught then it must be released or removed. If the snare is found not to be free-running then it must be removed or mended to make it free-running. It is an offence to fail to comply with these requirements. The requirements in relation to whether the snare is free-running are new. The Bill moves the requirements in relation to animals caught in snares from section 11(3), (3A) and (3B) of the 1981 Act but does not alter their effect.

66. Inserted section 11C of the 1981 Act provides that it is an offence for a person to set, or have in their possession, a snare without permission of the owner of the land which the person is on. The Bill moves this provision from section 11(3D) of the 1981 Act but does not alter its effect.

67. Inserted section 11D of the 1981 Act creates a presumption that the identification number appearing on a tag fitted to a snare is that of the person who set the snare. This applies to all snaring offences under the 1981 Act.

**Section 14 – Non-native species etc.**

68. Section 14 amends sections 14 and 14A of the 1981 Act and inserts new sections 14ZC and 14B of that Act.

*Introduction of new species etc.*

69. Subsection (2) inserts section 14(1) to 14(2B) of the 1981 Act.

70. It is an offence under inserted section 14(1)(a)(i) to release or allow to escape from captivity any animal to a place outwith its native range. This replaces the former offence which relates to the release or escape into the wild of an animal which is of a kind not ordinarily resident in and is not a regular visitor to Great Britain in a wild state. Section 14P(2) and (3) of the 1981 Act, as inserted by section 15 of the Bill, provides for the meaning of the native range of animals and plants.

71. It is an offence under inserted section 14(1)(a)(ii) to release or allow to escape from captivity any other animal specified in an order made by the Scottish Ministers under that section and inserted section 14(2C). This replaces the former offence which relates to an animal of a kind listed in Schedule 9 to the 1981 Act. The new power relates to release of an animal within its native range. For example, it might enable Ministers to control the release of a raptor within its native range to prevent harm to the wild population from increased competition for food.

72. It is an offence under inserted section 14(1)(b) of the 1981 Act to cause any animal outwith the control of any person to be at place outwith its native range. The offence applies where an animal that is not in captivity for the purposes of inserted section 14(1) is enabled by some act or omission to move to a new place outwith its native range.

73. Inserted section 14(2A) has the effect that an offence is not committed under inserted section 14(1) if the common pheasant or red-legged partridge are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting. A release of any other non-native bird or for any other purpose is unlawful, unless authorised by an order made by the Scottish Ministers under inserted section 14(2B), or by a licence granted under section 16 of the 1981 Act.

74. It is an offence under new section 14(2) of the 1981 Act to plant or otherwise cause to grow any plant in the wild outwith its native range. This replaces the former offence which relates to a plant of a kind listed in Schedule 9 to the 1981 Act.

75. Inserted section 14(2B) and (2C) of the 1981 Act enables the Scottish Ministers to specify a plant or animal to which the offences in inserted section 14(1) and (2) do not apply. The power can be used to make lawful the release of animals outwith their native range. For example, an order might make possible the re-introduction into any part of Scotland of a formerly native animal such as the European beaver.

76. Subsection (2)(b) amends the defence in section 14(3) of the 1981 Act to make it consistent with the other statutory defences in Part 1 of the 1981 Act. The accused must show that he took all reasonable steps and exercised all due diligence to avoid committing the offences in inserted sections 14(1) and (2).

77. Subsection (2)(c) repeals the provisions enabling the Scottish Ministers to authorise persons to enter any land to ascertain whether an offence in section 14 of the 1981 Act is being, or has

been, committed. A wildlife inspector appointed by Ministers under section 19ZC of the 1981 Act has the same power, so the repeal removes an unnecessary duplication.

*Prohibition on keeping etc. of invasive animals or plants*

78. Subsection (3) of the Bill inserts new section 14ZC into the 1981 Act, which enables the Scottish Ministers to prohibit the keeping of invasive animals or plants. Inserted section 14P(4) provides for the meaning of invasive. It is an offence to keep a prohibited animal, and a defence for the accused to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence. An order can provide for the payment of compensation to people who can no longer keep an animal or plant as a result of the making of an order. Keeping, and release, measures have been taken under the Destructive Imported Animals Act 1932 and the Import of Live Fish (Scotland) Act 1978, both repealed by the Schedule.

*Prohibition on sale etc. of certain animals or plants etc*

79. Subsection (4) changes the powers of the Scottish Ministers in section 14A of the 1981 Act to prohibit the sale and marketing of certain animals and plants. The amended power is exercisable in respect of an invasive animal or plant and not as before in respect of the release of the animal or plant that is prohibited under section 14 of that Act.

*Notification of presence of non-native animals or plants etc.*

80. Subsection (5) revokes the existing section 14B (guidance: non-native species) of the 1981 Act and inserts a new section 14B into that Act. Inserted section 14B enables the Scottish Ministers to require notification of the presence of an invasive animal or invasive plant at a place outwith the native range of the plant or animal. It is an offence to fail without reasonable excuse to notify the presence of a plant or animal as required under the inserted section.

**Section 15 – non-native animals and plants : code of practice**

81. Section 15 inserts new Section 14C into the 1981 Act. Section 14C enables the Scottish Ministers to issue codes of practice for the purpose of providing practical guidance in respect of the release, keeping, sale and notification offences in the 1981 Act, and related matters. For example, a code could offer guidance on how far an animal temporarily released by any person (such as a raptor in a falconry display) remains under the control of that person for the purposes of the release offence.

82. The Scottish Ministers must consult with Scottish Natural Heritage and any other persons appearing to them to have an interest before making (or modifying) a code. A draft code (or modification) must be laid before the Scottish Parliament at least 30 days before it is issued, and has effect.

83. Guidance in a code of practice issue under section 14C is not binding. It can however be taken into account in determining any question in any proceedings and in a criminal prosecution for a relevant offence the court may have regard to compliance with the code when deciding whether or not the accused is liable for the offence.

## **Section 16 - Species control orders etc.**

84. Section 16 inserts new sections 14D to 14P of the 1981 Act. Sections 14D to 14O of the 1981 Act provide for species control orders and section 14P provides for the interpretation of terms used in sections 14 to 14O of that Act.

### *Power to make species control orders*

85. Inserted section 14D of the 1981 Act enables any of the Scottish Ministers, Scottish Natural Heritage, the Scottish Environment Protection Agency or the Forestry Commissions (each of which is a 'relevant body' as defined in inserted section 14P(6)) to make a species control order for premises when the relevant body is satisfied of the presence on the premises of an invasive animal or plant at a place outwith its natural range.

86. The relevant body must give any owner or occupier it has identified at least 42 days in which to enter into a voluntary agreement before it can make a species control order. If such an agreement is entered into then an order can only be made on default. Section 14D also provides for a statutory notice where an owner or occupier cannot be identified.

### *Emergency species control orders*

87. Inserted section 14E enables a relevant body to make a species control order without agreement or notice under section 14D where the body is satisfied that the making of the order is urgently necessary. Any such emergency order expires 49 days after it is made.

### *Content of species control orders*

88. Inserted section 14F provides for the contents of species control orders. It enables a relevant body to specify what must be done by whom and by when in order to control or eradicate an invasive species, such as the removal of Japanese knotweed. It enables the body to specify preventative measures (an 'excluded operation'), such as a ban on strimming knotweed that might be needed due to a high risk that such an operation would cause the plant to spread. Lastly, it enables the relevant body to provide for who is to pay for control and eradication measures, which might include the owner or occupier of the premises subject to the order.

### *Notice of species control orders*

89. Inserted section 14G provides for notice of the making of a species control order to be given to the owner or occupier of premises, and if appropriate by a relevant body to the Scottish Ministers. The notice must give reasons for the making of the species control order, and set out where applicable that the order is an emergency order.

### *Appeals in connection with species control orders*

90. Inserted section 14H enables an owner or occupier whose premises are subject to a species control order to appeal to the sheriff within 28 days of being given notice of the making of the

order. The sheriff must consider the merits of the order, may suspend any effect of an emergency order, and will dispose of the appeal as he or she thinks fit. Further appeal from the decision of the sheriff is on a point of law only.

*Effect of species control orders*

91. Inserted section 14I provides that an emergency species control order has effect on the giving of notice under section 14G, and any other order has effect either on the expiry of the 28 day period for appeal under section 14H or where an appeal is made or the withdrawal or determination of the appeal.

*Review of species control orders*

92. Inserted section 14J enables a relevant body to review a species control order made by the body, and if appropriate revoke the order. An order might be revoked because it has been complied with before it would otherwise expire, or because an operation or excluded operation will for any reason no longer deliver the intended outcome (in which case it might be replaced by a subsequent order).

*Offences in relation to species control orders*

93. Inserted section 14K makes it an offence to fail without reasonable excuse to carry out an operation required under a species control order, to carry out an excluded operation, or to intentionally obstruct any person carrying out an operation required to be carried out under an order. Section 17(3)(d) of the Bill inserts new section 21(4ZA) of the 1981 Act which provides for penalties on conviction for such an offence.

*Enforcement of operations under species control orders*

94. Inserted section 14L enables a relevant body on default to carry out an operation required by a species control order. The body is not required to make any payment that would otherwise be required under the order, and may recover such payments and any additional costs incurred by the body in enforcing the order.

*Species control orders: powers of entry*

95. Inserted section 14M enables persons authorised by a relevant body to enter premises, giving notice where required, for the purposes of determining whether to enter into a species control order, whether to make or revoke an order, to serve any required notice, to ascertain whether an offence is being or has been committed, and to carry out operations required in connection with the order.

96. Inserted section 14P(5) defines premises for the purposes of sections 14 to 14O, with the effect that the powers of entry do not include power to enter a dwelling.

*Species control orders: entry by warrant etc.*

97. Inserted section 14N sets out when a sheriff must grant a warrant to an authorised person to use a power of entry that is otherwise authorised under section 14I, and the effect of such a warrant.

*Species control orders: powers of entry: supplemental*

98. Inserted section 14O sets out who may accompany an authorised person taking entry under a warrant granted under section 14N, and what that person may take on to the premises. It also provides for compensation to be paid for damage caused when entry is taken, unless the damage is attributable to the person who sustained it.

*Interpretation of sections 14 to 14O of the 1981 Act*

99. Inserted section 14P provides for the meanings of native range, invasive, premises and relevant body. It also makes further provision for the meanings of animal and plant.

**Section 17 – Non-native species etc.: further provision**

100. Section 17 amends the 1981 Act in connection with the changes made to that Act by section 15 of the Bill.

101. Subsection (2) has the effect the keeping measures in inserted section 14ZC do not apply to anything done under and in accordance with a licence granted by the Scottish Ministers under section 16 of the 1981 Act.

102. Subsection (3) amends section 21 of the Act to provide for penalties on conviction for a keeping, notification or species control order offence, and for forfeiture of any animal or plant which is of the same kind as that in respect of which a ‘species’ offence is committed. It provides expressly that the maximum period of imprisonment on summary conviction of an offence under sections 14, 14A and 14ZC is 12 months. That maximum was increased from 6 months to 12 months in respect of sections 14 and 14A by virtue of the ‘gloss’ in section 45 of Criminal Proceedings Etc. (Reform) (Scotland) Act 2007.

103. Subsections (4) and (8) repeal references to Schedule 9 to the 1981 Act and that Schedule respectively.

104. Subsection (5) enables Scottish Natural Heritage to advise any other relevant body carrying out operations under a species control order, or a person authorised to enter premises in connection with an order.

105. Subsection (6) has the effect that the making of a release, keeping, sale or notification order by the Scottish Ministers can be annulled by the Scottish Parliament. Ministers must consult with Scottish Natural Heritage and other persons before making a release, keeping or sale order.



106. Subsection (7) makes further provision for notice preparatory to, or the making of, a species control order. It has the effect that a notice of a species control order under section 14G cannot be served by electronic means, and that the general rule in the 1981 Act for service of notices on persons who cannot be identified do not apply to notice of a species control order under section 14D.

### **Section 18 – Licences under the 1981 Act**

107. Section 18 amends section 16 of the 1981 Act, which allows the licensing of activities prohibited under Part 1 of that Act.

108. Subsection (2)(a) and (b) amends section 16(3) and inserts a new section 16(3A) into the 1981 Act. The effect of this is to allow the licensing authority to grant a licence to carry out activities which would otherwise be prohibited in relation to animals and plants protected by Part 1 of the 1981 Act. The licence must be for a social, economic or environmental purpose. Inserted section 16(3A) also requires the licensing authority to be satisfied that the conduct authorised will give rise to or contribute towards social, economic or environmental benefit and that there is no other satisfactory solution.

109. Subsection (2)(c) to (e) amends section 16 of the 1981 Act to provide that the Scottish Ministers are the licensing authority (“the appropriate authority”) for all types of licence under section 16, except where they delegate licensing functions to SNH or a local authority as set out below.

110. Subsection (3) inserts a new section 16A into the 1981 Act. This enables Scottish Ministers to delegate licensing functions to SNH by direction or to local authorities by order. It also sets consultation requirements and makes other technical provisions in relation to such delegations. Subsection (4) makes consequential modifications to section 26 of the 1981 Act in relation to the new power to delegate by order in section 16A.

### **Section 19 – Amendment of Schedule 6 to the 1981 Act**

111. Section 19 amends Schedule 6 of the 1981 Act to remove duplication in relation to species which are also protected by the Conservation (Natural Habitats &c.) Regulations 1994 (S.I.1994/2716).

### **Section 20 – Wildlife inspectors etc.**

112. Section 20 amends the 1981 Act so that a wildlife inspector appointed by the Scottish Ministers under section 19ZC of the 1981 Act is authorised to take enforcement action in respect of the keeping, notification and species control order offences created by the Bill.

113. Subsections (2) and (3) repeal the provisions in sections 6 (sale etc. of live or dead wild birds, eggs etc.) and 7 (registration etc. of certain captive birds) of the 1981 Act that enable the Scottish Ministers to authorise persons to enter any land to ascertain whether an offence under those sections is being, or has been, committed. A wildlife inspector appointed by Ministers

under section 19ZC of the 1981 Act has the same power, so the repeal removes unnecessary duplication.

114. Subsection (4) enables a wildlife inspector to enter and inspect any premises to ascertain whether or not an offence in respect of the sale etc. of wild hares or rabbits (inserted section 11G of the 1981 Act), the keeping or notification of an invasive plant or animal (inserted sections 14ZC and 14B), or a species control order (inserted section 14K), (the “new offences” in paragraph (a)) is being or has been committed. It enables a wildlife inspector to require in connection with the new offences that a specimen is made available for examination by the inspector. It enables a wildlife inspector to enter premises to check for compliance with a condition of a registration or licence granted under Part 1 of the 1981 Act as amended by the Bill, as well as before to in connection with verifying statements made in connection with an application for or the holding of a licence or registration.

115. Subsection (5) enables a wildlife inspector to require the taking of a sample of blood or tissue from a specimen found when taking entry under section 19ZC in respect of the new offences, or any connected specimen, in order to determine the origin, identity or ancestry of the first specimen. It also provides a new definition of “tissue” in section 19ZD (power to take samples: Scotland) of the 1981 Act.

116. Subsection (6) repeals the function of a GB conservation body under the 1981 Act to advise or assist a person not being a wildlife inspector authorised to enter premises in connection with an offence under sections 6, 7 and 14 of that Act.

## **Section 21 – Repeals relating to Part 2 and game licensing**

117. This section repeals part, or all, of the various Acts in the Schedule. These mainly relate to game laws. The repeals of the Game Licences Act 1860 and the Game Act 1831, together with consequential repeals of related legislation, have the effect of abolishing the game licensing regime.

## **PART 3 – DEER**

### **Section 22 – Deer management**

118. Section 22 amends SNH’s general functions and duties in relation to deer management under sections 1, 3 and 4 of the Deer (Scotland) Act 1996. Subsection (2) amends section 1 of the 1996 Act to require SNH to take into account the interests of public safety and the need to manage the deer population in urban and per-urban areas when exercising its functions. This adds to the current factors that must be taken into account (size and density of the deer population and its impact on natural heritage, the needs of agriculture and forestry and the interests of owners and occupiers of land).

119. Subsection (3)(a) amends section 3(1) of the 1996 Act to confer power on SNH to assist any person or organisation in reaching agreements with third parties. This adds to the powers currently set out in section 3 of the 1996 Act.

120. Subsection (3)(b) inserts a new section 3(3) into the 1996 Act. This imposes a duty on public bodies and office holders to have regard in exercising their functions to any guidance or advice issued by SNH relating to the conservation, control or sustainable management of deer or to any other aspect of the SNH's deer functions.

121. Subsection (4) amends section 4(1) of the 1996 Act to remove a limit on the number of members of a panel appointed under that section.

### **Section 23 – Deer management code of practice**

122. Section 23 inserts a new section 5A into the 1996 Act. This imposes a duty on SNH to draw up a Code of Practice for the purpose of providing practical guidance in respect of deer management. Section 5A(1) and (2) sets out the purpose and general content of the code. Section 5A(3) to (8) sets procedural requirements for the preparation and entry into force of the code as well as its replacement or revision. These include requirements for public consultation, approval by Scottish Ministers and laying before the Scottish Parliament. Section 5A(9) requires SNH to monitor compliance with the code and to have regard to it in carrying out its own functions.

### **Section 24 - Control agreements and control schemes etc**

123. Section 24 amends sections 7, 8, 10 and 11 of the 1996 Act. Section 7 of that Act allows SNH to initiate control agreements where deer are causing certain kinds of damage. These agreements relate to “measures” to manage deer. Section 8 allows SNH to make control schemes where control agreements have failed. Schedule 2 of the 1996 Act sets out the procedure for Ministers to confirm control schemes. Sections 10 and 11 confer powers to take emergency action where deer are causing serious damage and control agreements or schemes are not an option.

124. Subsection (2) amends section 7 of the 1996 Act, which relates to control agreements. The effect of the amendments is to require SNH to have regard to the code of practice when deciding whether to exercise its functions. The amendments also expand the types of damage which can be relied on as a basis for SNH seeking a control agreement, the purposes of such agreements and the types of measures they can cover. The amended section 7 will cover damage as a result of steps taken or not taken for the purposes of deer management as well as damage by deer themselves. It will also cover damage to deer welfare or to public interests of a social, economic or environmental nature. It will allow SNH to seek a control agreement for the purpose of remedying existing damage (as well as preventing further damage in future). The amendments will also allow control agreements to provide for a wider range of measures than those to reduce deer numbers. The amended section will also state that control agreements may set out steps to be taken in each 12 month period within any control agreement. SNH will be required to review compliance with control agreements on an annual basis.

125. Subsection (3) amends section 8 of the 1996 Act, which relates to control schemes. The effect of the amendments is to ensure that, with one exception, the tests which allow SNH to make a control scheme are the same as those which would allow it to seek a control agreement. The exception is that SNH cannot make a control scheme in relation to a control agreement which was concluded for the purpose of altering or enhancing the natural heritage. The amendments also set deadlines for concluding that control agreements have failed. SNH will be required to review compliance with control schemes.

126. Subsections (4) and (5) amend sections 10 and 11 of the 1996 Act, which relate to emergency measures to control deer. The amendments will allow emergency measures to be taken in relation to any damage, including damage to deer welfare.

### **Section 25 - Deer: close seasons**

127. Section 25 amends sections 5, 26 and 37 of the 1996 Act. Under section 26, occupiers will retain the right to take or kill deer but will require an authorisation under section 5 if they wish to do so during the close seasons. SNH will be able to grant authorisations under section 5 for the purposes of preventing damage to crops, pasture, human or animal foodstuffs or enclosed woodland. It will be possible to issue general authorisations to classes of people (e.g. occupiers) or in respect of types of land (e.g. arable land). The requirement to consider fitness and competence under section 37 will continue to apply except when considering authorisations to occupiers for the purposes of preventing damage to crops, pasture, human or animal foodstuffs or enclosed woodland.

### **Section 26 – Register of persons competent to shoot deer**

128. Section 26 inserts new sections 17A and 17B into the 1996 Act. Section 17A (inserted by subsection (4)) contains an enabling power which permits Ministers to introduce a requirement that any person shooting deer, or supervising the shooting of deer, must be named on a register as competent to do so. Section 17A(3) creates an offence of shooting deer in contravention of requirements set under the enabling power. This is subject to an exception (in section 17A(4)) which allows the killing of a deer which is injured or diseased or killing dependant young which has been, or is about to be, deprived of its mother.

129. Regulations made under the enabling power may also provide that persons who are registered as competent can be considered “fit and competent” for the purposes of authorisations to shoot deer at night, or during close seasons (section 17A(1)(c)).

130. In the event that a competence requirement is introduced, regulations may also require those persons named on the competence register to submit a regular cull return (section 17A(1)(d)). “Cull return” is defined in section 17A(6) as a return showing the number of deer of each species and of each sex which have been killed. Section 17A(5) creates an offence of failing to submit a cull return in accordance with regulations or submitting a return which is materially false or misleading. This offence would replace the offence under section 40(4) of the 1996 Act.

131. Section 17A(2) allows regulations to include supplementary, incidental or consequential provision and lists examples of the type of provision this might include.

132. Subsection (9) of section 26 sets maximum penalties for the new offences in section 17(A)(3) and (5). Subsections (2), (3) and (5) to (8) make further amendments to the 1996 Act in consequence of the new section 17A.

133. Section 17B (inserted by subsection (4)) requires SNH to conduct and publish a review of competence in deer stalking and its effect on deer welfare if the enabling power in section 17A has not been exercised by 1 April 2014.

## **PART 4 – OTHER WILDLIFE ETC.**

### **Section 27 – Protection of badgers**

134. Section 27 amends provisions of the Protection of Badgers Act 1992.

#### *Offences*

135. The 1992 Act provides for five separate offences in relation to badgers: taking, injuring or killing (section 1); cruelty (section 2); interfering with badger setts (section 3); selling and possession of live badgers (section 4) and marking and ringing (section 5).

136. It is already an offence to knowingly cause or permit interference with a badger sett (section 3(2) of the 1992 Act). Section 27(2) to (5) creates new offences of knowingly causing or permitting any of the other offences in the 1992 Act, except the offence of wilfully remaining on land or refusing to give a full name or address under section 1(5) of the 1992 Act.

#### *Licences*

137. Under the 1992 Act as originally enacted, licensing functions were split between SNH and Scottish Ministers based on the reason for granting the licence. Subsection (6) amends section 10 of the 1992 Act to provide that the Scottish Ministers are the licensing authority (“the appropriate authority”) with power to grant a licence for any of the listed reasons, except where they delegate licensing functions to SNH or a local authority as set out below. Before granting a licence, the Scottish Ministers are required to consult SNH.

138. Subsection (7) inserts a new section 10A into the 1992 Act. This section allows Scottish Ministers to delegate their licensing functions to SNH by written direction, or to a local authority by order following consultation with the local authority, SNH and anyone else affected by the making of the order. If a local authority has been delegated licensing functions, they must consult SNH before granting or modifying a licence.

*Attempts to kill, injure or take badgers*

139. Subsection (8) amends section 11A(3) of the 1992 Act. This section creates a presumption that a person was attempting to do kill injure or take a badger where there is evidence from which it can be reasonably concluded that this is what they were attempting to do. The amendment applies the presumption to the new offence of knowingly causing or permitting the killing, injuring or taking of a badger.

*Penalties*

140. Under section 12(1A) of the 1992 Act, certain offences can be prosecuted either on indictment or summarily. These offences are primarily those related to badger digging and baiting and include the offences of causing a dog to enter a sett and selling a live badger. These offences are “relevant offences” within the meaning of sections 45(6) and 47(6) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, which means that the maximum penalties on summary conviction are a 12 month sentence of imprisonment and/or a fine of the statutory maximum (which is set under section 225(8) of the Criminal Procedure (Scotland) Act 1995 and is currently £10,000). The maximum penalty for conviction on indictment is a 3 year sentence of imprisonment and/or an unlimited fine. Offences covered by section 12(1) of the 1992 Act can only be prosecuted summarily . The maximum penalties for these offences range from a fine of level 3 on the standard scale (for offences under section 1(5) of the 1992 Act) to a level 5 fine (currently set at £5,000 by section 225(2) of the Criminal Procedure (Scotland) Act 1995) and/or a six month sentence of imprisonment (for the offence of killing a badger as well as for most other offences under the 1992 Act).

141. Subsection (9) amends section 12 of the 1992 Act to extend the list of offences which can be prosecuted either on indictment or summarily. The effect is to allow the offences of illegally killing, injuring or taking a badger, possessing all or part of a dead badger, knowingly permitting or causing these offences, knowingly permitting or causing cruelty to a badger and knowingly permitting or causing the sale or possession of a live badger to be prosecuted summarily or on indictment.

142. Subsection (9) also amends section 12 of the 1992 Act to state that the maximum penalties for summary conviction for offences which can be tried either summarily or on indictment are a 12 month sentence of imprisonment and/or a fine of the statutory maximum. The effect is to ensure that the new offences which can be tried either way will be subject to the same penalties as the existing either way offences under the 1992 Act.

*Time Limits*

143. Subsection (10) extends the application of the time limits prescribed in the 1992 Act for bringing summary proceedings to cover all of the offences in the 1992 Act. The effect is that summary proceedings for any offence under the 1992 Act must be brought within 6 months of the date on which the prosecutor has sufficient evidence to initiate proceedings. In addition summary proceedings cannot be brought more than 3 years after the commission of the offence or, where the offence is an ongoing one, more than 3 years after the last date on which the offence was committed.

*Powers of court where dog used or present at commission of offence*

144. Subsection (11) makes a consequential amendment to section 13 of the 1992 Act to include the new offence of knowingly causing or permitting someone to unlawfully kill, injure or take a badger. This means that a court can disqualify a person found guilty of this offence from having custody of a dog.

**Section 28 - Muirburn**

*Muirburn Season*

145. Section 28 amends the Hill Farming Act 1946. Sections 23 to 27 of the 1946 Act regulate the practice of muirburn in Scotland.

146. Subsection (2) replaces section 23 of the 1946 Act which deals with the permitted times for making muirburn. The substituted section 23 establishes a positive muirburn season, consisting of a “standard muirburn season” (1 October until 15 April) and “extended muirburn season” (16 April until 30 April) (see section 23(2) to (4)). Muirburn may only be made during the extended muirburn season with the proprietor’s permission (section 23(5)).

147. The new section 23 removes the ability to make muirburn between 1 and 15 May on land situated more than 450 metres above sea level which had previously been possible with the proprietor’s permission. Under the new section 23, the last date of the “extended muirburn season” at all altitudes is 30 April.

148. The new section 23 also removes a power for Scottish Ministers to make limited extensions to the muirburn season in the spring by direction. This is replaced by an extension to the order making power in section 23A of the 1946 Act.

149. Subsection (3) amends section 23A of the 1946 Act, which was inserted by section 58 of the Climate Change (Scotland) Act 2009. Subsection (3)(b) and (c) extends the purposes for which the muirburn season may be varied (to include conserving, restoring, enhancing or managing the natural environment, or for public safety) and allows the dates to be varied on a geographical or phased basis. Subsection (3)(a) and (d) make changes to section 23A in consequence of the changes to section 23 of the 1946 Act, which sets the dates of the muirburn season.

*Muirburn Licences*

150. Subsection (4) inserts a new section 23B into the 1946 Act. This allows Scottish Ministers to license out of season muirburn for the purposes of conserving, restoring, enhancing or managing the natural environment, for research or for public safety. Muirburn licences may be granted subject to conditions. Scottish Ministers may delegate this licensing power to SNH. Inserted section 23B(11) enables Scottish Ministers to make further provision in regulations about muirburn licences. Such regulations are subject to negative procedure in the Scottish Parliament.

### *Muirburn Offences*

151. Subsection (5)(a) amends section 25 of the 1946 Act to create an offence of making muirburn outwith the muirburn season and otherwise than in accordance with a muirburn licence. This replaces the offence under the previous version of section 23(4) of the 1946 Act and is consequential on the changes to section 23 and the insertion of section 23B.

### *Notifications in relation to muirburn*

152. Subsection (6) amends section 26 of the 1946 Act to set new notification requirements in relation to muirburn. Subsection (7) inserts a new section 26A regarding the permitted methods for giving muirburn notices. Subsection (5)(b) repeals the previous notification requirements set under section 25(c) of the 1946 Act.

153. Under the amended section 26 of the 1946 Act it is an offence to make muirburn without having provided the proprietor of the land, and the occupiers of land within 1 km of the proposed muirburn site, with written notification of the intention to burn during that muirburn season (see section 26(1), (2) and (10)). Notice does not require to be given to those who have indicated in writing that they do not wish to be notified (section 26(3)).

154. Amended section 26(4) to (7) makes provision about timescales, content and permitted methods of notification. Notice of intention to burn must be given after the end of the previous muirburn season, and at least 7 days before burning (section 26(5)(a)). It must indicate the places where burning is planned and specify that further information about the intended dates, location and approximate extent of burns may be requested (section 26(5)(b) and (c)). When such a request is made, the person intending to make the muirburn must make reasonable efforts to comply with this request not later than the day before the muirburn is made (section 26(7)). Where there are 10 or more occupiers within 1km of the proposed muirburn site, notification may alternatively be made by placing a notice in a local newspaper (section 26(4)).

155. Inserted section 26A of the 1946 Act specifies the permitted methods for giving muirburn notices. In addition to delivering (section 26A(1)(a)), leaving or posting (section 26A(1)(b) and (c)) written messages, it permits the use of electronic communications (including email, text message and fax) where the person to be notified has agreed to be notified in that way (section 26A(1)(d)). Notices given by electronic communications are deemed to have been received 48 hours after they are sent (section 26A(3)). Where it is not possible to ascertain the identity of an occupier who requires to be notified, fixing a notice to a conspicuous object on their land is a permitted form of notification (section 26A(2)).

## **PART 5 – SITES OF SPECIAL SCIENTIFIC INTEREST**

### **Section 29 - Combining SSSIs**

156. Section 29 inserts new section 5A into the 2004 Act which provides for the combination of SSSIs. Subsections (1) to (4) provide procedure relating to the notification and advertisement of combined SSSIs and the revision of the management statement for the combined site. From



the date of notification of the combined SSSI, the component SSSI notifications cease to have effect under subsection (3)(c). Subsection (5) clarifies that SNH may not include any land in the new combined site which was not already part of one of the component sites and may not add a new operation requiring consent as a result of this procedure.

### **Section 30– Denotification of SSSIs; damage caused by authorised operations**

157. Section 30 inserts provision into section 9 of the 2004 Act for the streamlining of denotification of SSSIs in certain circumstances, i.e. when all or any part of an SSSI is no longer of special interest due to damage to, or destruction of, a natural feature when that damage or destruction is a consequence of an authorised operation and when the public body or office holder has already consulted SNH before permitting the operation.

### **Section 31 – SSSIs: Operations Requiring Consent**

158. Section 31 amends sections 13 and 14 of the 2004 Act such that existing provision relating to operations carried out by public bodies is also applied to operations which are caused or permitted by public bodies (when such operations occur on land which is owned or occupied by the public body).

159. Subsections (3)(a)(i) and (4)(a)(i) amend sections 14 and 17 of the 2004 Act such that SNH consent is not required when an operation is in accordance with a control scheme made under section 8 of the Deer (Scotland) Act 1996. Subsections (3)(a)(iii) and 4(a)(iii) insert new paragraphs into section 14(1) and 17(1) such that SNH consent is not required for operations which are specified in an order made by the Scottish Ministers.

### **Section 32 – SSSI Offences: civil enforcement**

160. Section 32 inserts a new section 20A into the 2004 Act which provides for the giving of restoration notices. Such notices may be given by SNH. The procedure has a preliminary step covered by subsections (1) and (3). Subsection (1) allows SNH to propose to give a restoration notice to the responsible person if it is satisfied that that person has committed an offence under section 19(1) or 19(3) of the 2004 Act. Subsection (3) specifies how the proposal is to be made (i.e. it must explain why SNH proposes to give the restoration notice, be accompanied by a draft of the proposed restoration notice, explain that giving notice of intention to comply with the restoration notice within 28 days of it being given would discharge the responsible person from liability to conviction for the offence in question, explain that the responsible person has the right to make representations to SNH within 28 days from the date on which the proposal was made and specify the manner in which such representations are to be made).

161. Subsection (2) explains what is meant by the term “restoration notice”. Subsection (4) enables SNH to give a restoration notice after the period for making representations (28 days) has expired. Subsection (5) gives effect to a restoration notice only if the responsible person gives SNH notice of intention to comply with it within 28 days of the notice being given. Subsection (6) allows SNH to extend the period for operations to be carried under the notice or otherwise modify the notice as SNH considers appropriate. Subsection (7) clarifies that SNH may only modify the notice under (6)(b) where the responsible person has consented to such a

modification. Subsection (8) allows SNH to withdraw a restoration notice should it become satisfied that the restoration notice should not have been given to the responsible person. Subsection (9) requires SNH to compensate the responsible person for any expenses reasonably incurred in complying with a notice which is withdrawn. Subsection (10) prevents proceedings being commenced or continued for an offence in relation to which a restoration notice has effect even if the notice is subsequently withdrawn.

162. Section 20A(11) provides that failing to comply with a restoration notice will itself be an offence. In the event of the requirements of a restoration notice not being carried out, subsection (12) allows SNH to carry out the operations and recover costs from the responsible person.

163. Section 32 also amends sections 14(1) and 17(1) of the 2004 Act such that SNH consent is not required for operations carried out by public bodies or owner occupiers when such operations are in accordance with the requirements of a restoration notice. Section 44(1) of the 2004 Act is amended so as to grant a new power of entry to SNH for the purposes of it ascertaining whether an operation as required by a restoration notice has been carried out in accordance with the notice. Section 32(2) makes consequential amendments of the Criminal Procedure (Scotland) Act 1995.

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

#### **Background**

164. This document sets out the financial implications of the Wildlife and Natural Environment (Scotland) Bill. It should be read in conjunction with the Policy Memorandum and the Bill itself. The Policy Memorandum explains in detail the policy intentions of the Bill.

165. The main aim of the Wildlife and Natural Environment (Scotland) Bill is to deliver a package of measures to ensure wildlife and natural environment legislation is fit for purpose. The Bill modernises outdated statute, addresses anomalies and recognised weaknesses in existing legislative provision and implements new policy objectives. Overall the Bill builds on and modifies existing legislation and established structures.

166. A key driver for the Bill is to ensure that existing resources are deployed as efficiently and effectively as possible, with the intended result that improvements in the legal framework for wildlife and the natural environment will be achieved within the same financial parameters. The Scottish Government aims to support sustainable economic activity by ensuring wildlife and natural environment legislation is efficient, effective and proportionate. The Bill is intended to support this objective.

## **Summary of the Financial Memorandum**

167. The Financial Memorandum sets out the Scottish Government's expectations of the financial consequences of the substantive parts of the Bill. This information is provided for each policy area and produced in a summary table at the end of this document.

168. The Bill is not intended to give rise to any significant financial consequences for the Scottish Administration, local authorities or other bodies, individuals and businesses. The financial implications are expected to be marginal, consistent with the Scottish Government's aim of improving the effective operation of existing structures and processes. Limited recurring costs are expected to arise in relation to the administration of licensing systems. Non-recurring costs may arise where discretionary powers are exercised, such as in relation to ensuring effective collaboration between landowners in relation to deer management. Other non-recurring costs such as snare operators undertaking training, and being issued with identification numbers will arise. Where appropriate these recurring and non-recurring costs are identified and costed.

169. It is important to note that the legislative provisions in the Bill are also expected to have positive long-term financial benefits both to the public purse and to private individuals. This is demonstrated most clearly in the case of invasive and non-native species (INNS). The new legislative provisions are designed to stop the release of non-native species. Non-native species that have previously been released and are established, can cost a significant amount to address.

## **Consultation**

170. In June 2009 the Scottish Government published a consultation document<sup>1</sup> to obtain views on potential reform to a number of areas of wildlife and natural environment legislation. This consultation has informed the development of the Bill. 456 responses were received to the consultation from both individuals and organisations.

171. Where relevant, this Financial Memorandum identifies areas where there was a significant response from consultation respondents on the financial implications of the provisions.

172. A Liaison Group consisting of representatives from public bodies (Convention of Scottish Local Authorities, Deer Commission for Scotland, Forestry Commission Scotland, Scottish Environment Protection Agency, Scottish Natural Heritage) and the Scottish Government has met on several occasions to ensure that public bodies were involved in the development of the Bill and the Bill's financial consequences.

## **Structure of the Bill**

173. A summary of the main provisions of the Bill is set out below:

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<sup>1</sup> Analysis of Responses to the Consultation on the Wildlife and Natural Environment Bill, Envirocentre Ltd and CAG Consultants, February 2010 - Available at <http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/WildNatEnvBill/Analysis>.

*These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010*

- **Game law** – Repeal of outdated licensing systems, and the modernisation of ancient poaching statute.
- **Areas of Special Protection (ASP)** – Repeal of ASPs, defunct due to more recent legislation.
- **Snaring** – Implementation of Ministerial commitments on snaring by creating a training requirement for those who wish to set snares and the fitting of ID tags to all snares.
- **Invasive and non-native species** – Creation of a clearer ‘no release’ presumption for non-native species, and the creation of new powers to enable effective control and eradication of species problems where they arise.
- **Species licensing** – Flexibility to place the administration of species licences with the public body best placed to carry out the function, and providing for circumstances in which UK protected species can be disturbed for social, economic or environmental purposes (EU protected species can already be disturbed for such purposes).
- **Deer** – Modernisation of the Deer (Scotland) Act 1996, in particular through the creation of a statutory Code of Practice for deer management.
- **Badgers** – Minor changes to badger offence provisions and flexibility to transfer the administration of badgers licences to the public bodies best placed to carry out the function.
- **Muirburn** – Increased flexibility (e.g. out of season licensing) in how muirburn can be carried out.
- **SSSIs/ASPs** – Technical changes to improve the operation of SSSI legislation and the repeal of defunct Areas of Special Protection legislation.

## **GAME LAW**

### **Background**

174. The Bill proposes to repeal game-shooting and game-dealing licensing systems which are considered redundant, and which have been repealed in England and Wales. The Bill also proposes to replace outdated game-poaching legislation (which deals with offences and penalty and enforcement provisions relating to the illegal taking of game birds and ground game).

#### *Game-licensing*

175. Anyone wishing to hunt game must obtain a licence before doing so. Anyone wishing to deal in game must take out two licences before doing so. The licensing systems are established under the Game Licences Act 1860 and the Game Act 1831. Compliance rates are believed to be low, and the licences are considered to serve little useful purpose. The Bill therefore proposes that they be repealed. It is also proposed that the current restriction on when game can be sold is removed.

#### *Game-poaching*

176. Game-poaching legislation also dates to the 18<sup>th</sup> and 19<sup>th</sup> centuries. The legislation is widely recognised as being outmoded, difficult to understand and containing anomalous provision. The Bill therefore proposes to restate the main elements of poaching legislation

(offence, penalty and enforcement provisions) in modern form. Accordingly, the modernisation would not create new financial burdens and none are recorded in this Financial Memorandum.

### **Costs to the Scottish Administration**

177. The Scottish Government does not currently bear any direct costs relating to the administration of the game-licensing systems. Repeal of the licensing systems would not create any new burden on the Scottish Administration.

### **Costs to local authorities**

178. Revenues from the game-licensing systems currently accrue to individual local authorities according to where the licences were purchased.

179. The costs of hunting-licences are very low, ranging from £2 to £6. Accordingly the amount of money generated by the hunting licences is modest and in the last period figures were collated (for 2005/06) amounted to £13,306 across Scotland.

180. Current legislation requires game-dealers to obtain two licences – a local authority licence and an excise licence. The cost of the local authority licence is set by individual local authorities and varies between £4 and £125. The excise licence is set at £4. Again, the amount of revenue generated by these licences is modest. It is not possible to obtain accurate information on how much revenue is created by the local authority licence but it appears that on average individual Scottish local authorities receive less than £600 annually from the local authority licence and the excise licence. This figure is a composite of the average income from the two licences.

181. Repeal of the licensing systems would result in the loss of this marginal revenue flow to local authorities. The amount of money generated by licences does not take into account the administration costs to the local authority in issuing the licences. Therefore although the loss of income from licences is shown as the cost to local authorities, this is the maximum sum lost, and if administration costs were taken into account this would result in a saving.

### **Costs on other bodies, individuals and business**

182. The costs of hunting-licences and dealing-licences fall to individual hunters and game-dealers. Repeal of the licensing systems would mean that the sums noted above would no longer have to be paid by these individuals and organisations. No new financial burden would fall on these individuals and organisations as a result of the repeal of these systems.

183. Hunting licences and excise licences are currently issued by the Post Office, with income defrayed on to the relevant local authority. The British Association for Shooting and Conservation (BASC) currently offers a service whereby for a nominal fee of £1 it will obtain and send a game licence to stalkers. BASC are supportive of removing the licensing requirements.

## **Summary of Benefits and Costs**

184. The repeal of the game-licensing systems will remove a layer of redundant regulation. It will result in around **£30,000** savings per year to the game sector, with a corresponding loss in revenue for local authorities.

185. The £30,000 figure is a composite of the £13,306 generated by hunting licences and £600 x 32 local authorities generated by local authority and excise licences. The total is shown as circa £30,000 (rather than £ 32,506) as it appears that individual authorities receive less than £600 annually so it is a best estimate.

186. The consultation conducted on the Bill did not reveal any resistance from stakeholders or local authorities to this proposed change on financial grounds.

## **AREAS OF SPECIAL PROTECTION (ASP)**

187. The Bill repeals the legislation establishing ASP. ASPs are considered defunct as the 1981 Act and other measures provide the appropriate protection for wild birds.

188. There are no cost implications for the Scottish Administration, local authorities, bodies, individuals or businesses.

## **SNARING**

### **Background**

189. Following a public consultation in November 2007, the then Minister for Environment, Michael Russell MSP, announced a package of measures to the Scottish Parliament in March 2008 to deliver the recommendations that were largely based on the findings of the Report of the Independent Working Group on Snares (James Kirkwood et al., 2005) commissioned by DEFRA.

190. The Bill will require all snares to be fitted with identification tags which show an identification number and whether the snare is intended to catch foxes or rabbits/brown hares. An identification number will be obtained from the police, and the police must be satisfied that a person has been trained before issuing an identification number. It is estimated that a one-off training course will cost the operator approximately £40-45.

191. While each snare must carry a tag, it is not necessary for each snare to be uniquely identified i.e. all that is required is the snare operator's identification number and information to show whether the snare is intended to catch foxes or rabbits/brown hares. The type of tag is not specified except that the tag and the identification marking should be weatherproof and reasonably resistant to tampering or unauthorised removal. The cost of fitting an identification tag to each snare is small and estimated at no more than £0.05p per tag.

### **Costs to the Scottish Administration**

192. There will be no costs to the Scottish Administration resulting from these legislative changes.

### **Costs to local authorities**

193. There will be no costs to local authorities resulting from these legislative changes.

### **Costs to other bodies, individuals and business**

194. All snaring operators will be required to undertake a snaring training course which is expected to cost approximately £40-45 per person. It is estimated that around 3000-5000 individuals will require to undertake the training. It is estimate that an additional 100 new operators per year will require to undergo training.

195. It is estimated that the initial cost to the Police of issuing identification numbers will be £12,750-£21250 with a recurring cost of £425 per year thereafter to account for additional operators. This equates to an average cost of £1,594-£2,656 per police force in the first year followed by £53 for each year thereafter.

### **Benefits**

196. These provisions will make training compulsory for snaring operators (voluntary training is currently undertaken by some operators). This will result in a non-recurring cost for each operator. This is estimated to be a total non-recurring cost of **£120,000-£225,000** for the sector. The ongoing costs to the sector (based on 100 new operators per year) is **£4,000-£4,500** per year. The issue of an identification number to operators by the police will result in a non-recurring cost to the police of **£12,750-£21,250** with a cost of **£425** per year thereafter.

197. This system of training of operators and identification of the operator of a snare (by the identification number) will result in increased certainty for the police in identifying the responsible person for each snare set in their operational area.

## **INVASIVE AND NON-NATIVE SPECIES**

### **Background**

198. The Bill sets out provisions designed to strengthen legislative mechanisms relating to invasive and non-native species, including:

- preventing the introduction and spread of non-native animals and plants
- introducing provisions relating to the keeping and notification of specified invasive animals and plants
- ensuring effective control and eradication measures can be carried out when problem situations arise

### *Benefits*

199. Invasive and non-native species impact across a broad range of areas including biodiversity, agriculture, forestry, aquaculture, the development industry, transport, utilities, and recreation; resulting in significant costs to individuals, business and government.

200. Preventing the release of all non-native species (both known invasive or otherwise) should be given the highest priority as the most effective and least environmentally damaging intervention. Once a species has become widely established, full-scale eradication is possible or cost effective in only a minority of cases and they can have significant impacts on biodiversity and the economy. For example, Japanese knotweed, which is one of the best known invasive non-native species, has been established for a considerable time (it was first introduced early in the 19th century) and its financial impacts are known to be significant. The plant is thought to have economic costs of approximately £18 million a year in Scotland, made up of control costs for a variety of sectors including local authorities, individual householders, and the road and rail network, with the majority of costs falling to developers controlling Japanese knotweed on development sites. The Bill aims to ensure that cost currently association with invasive non-native species such as Japanese knotweed are not replicated in the future by emphasising the importance of prevention.

201. The provisions set out in the Bill also aim to facilitate eradication (where appropriate) of invasive non-native species at an early stage. As eradication costs generally increase exponentially as establishment continues, if a decision is taken to remove or eradicate the species from the environment at an early stage (a decision that will be based on a number of factors including cost, feasibility, and acceptability), it is generally much more cost effective than long-term control or late-stage eradication.

### *Prevention – Release, Keeping and Notification*

202. Preventing the introduction and establishment of non-native species is a primary objective to avoid long term costs and environmental damage.

203. New release provisions will prevent the release of all plants and animals outside their native range. Appropriate flexibility will be maintained by creating a list of general and licensable exemptions, so that people can continue to carry out legitimate activities (e.g. game bird releases).

204. Regulating the keeping of high-risk invasive species can reduce the risk of escape or protect particularly sensitive or vulnerable habitats or species. The Bill provides for Scottish Ministers to prohibit by order the keeping of a particular type of invasive animal or plant or. The powers are not expected to be used widely, will be subject to consultation, and where appropriate keeping of a banned species could be permitted under licence. Keeping orders for Chinese muntjac deer, and all deer (excluding red deer) on the refugia islands have already been consulted on. Costs will be driven by the numbers of people who wish to keep identified high-risk species (if keeping is allowed under licence and not prohibited).



205. The Bill also provides a power for Scottish Ministers to list by order species that are required to be notified by specified persons. As with the keeping provisions they are not expected to be used widely and only for high-risk invasive non-native species.

206. The Bill provides a discretionary power for Scottish Ministers to make compensation to a person who may no longer keep the specified animal or plant. This is similar to a power provided in section 7 of the Destructive Imported Animals Act 1932 (which would be repealed by the Bill) although that Act only covers mammalian species. The new provision only applies where people are banned from keeping a specified species, in most cases it is expected that keeping would be permitted under licence. The recent orders that were consulted on (e.g. muntjac) proposed that keeping would be permitted under licence. If a new species was proposed for listing by order, consultation would be required which would set out the proposals including whether the plant or animal was to be prohibited absolutely from keeping and if so, whether compensation was to be provided.

### **Costs to the Scottish Administration**

207. These provisions will be supported by enhanced guidance that will be developed by the Scottish Government with assistance from SNH and the Scottish Working Group on Non-Native Species. The administration involved will be covered from within existing resources.

208. The administration and inspection involved in the keeping orders outlined above (that were consulted on in the Bill Consultation) will be covered from within existing resources.

### **Costs to local authorities**

209. The amended no release provisions and notification provisions will not result in any new costs to local authorities.

### **Costs to other bodies, individuals and business**

210. Release provisions will not result in any new costs for private individuals, landowners or businesses as they do not provide new offences but rather clarify and improve existing provisions. The release of plants and animals to be exempted from the no-release presumption will be set out. This will ensure that current low-risk activities can continue to take place.

211. Where an individual wishes to keep an identified high-risk species they will need to comply with any necessary conditions. None may be required if the animal is being kept securely but if the enclosure is unsuitable then improvements will be need to be undertaken. Assuming that one keeping order is made each year, that this is for an animal that is not widely kept (e.g. by 1-10 individuals), and that it is appropriate to permit keeping under licence, and that lawful keeping requires individuals to improve enclosures at an average cost of £500, it can be estimated to range between **£500 - £5,000**.

212. The new notification provisions will not result in any costs to other bodies, individuals and business.

### *Control and Eradication*

213. The Bill introduces a new regime of control orders that will enable relevant bodies (Scottish Ministers, SNH, the Scottish Environment Protection Agency (SEPA) and the Forestry Commissioners (FCS)) to make species control orders which enable or require control or eradication on measures where an invasive non-native species is present. These powers are not expected to be used widely, and voluntary measures should be attempted first whenever possible. Examples of where it might be appropriate to make an order include where a voluntary arrangement has failed, a high risk invasive non-native species has been detected which is not widespread, or where a strategic control plan for an invasive non-native species is in place and a population is detected that is a threat to that plan.

214. The relevant body will be able to provide for the payment of costs in an order. It is expected that the power to recover or impose costs on the owners or occupiers of premises will be exercised fairly and proportionately, applying the “polluter pays” principle.

### **Costs to the Scottish Administration**

215. The new control provisions in the Bill will enable relevant bodies to target their budgets more effectively (the Scottish Administration is already involved in projects to address invasive non-native species) and to take action in situations which current legislation does not provide for.

216. The new control provisions will also enable action via control orders to be undertaken where a voluntary control agreement has been refused or has not been complied with, where it is not possible to ascertain who the occupier or owner is, and where the situation is an emergency.

217. Development of these orders will involve the administrative task of site visits, meetings and drawing up and issuing the document (estimated to be the equivalent of approximately 1-4 days of staff time at B2 grade). Some situations may require a risk assessment. It is anticipated that the cost of making an order will be between **£200-£1,000** per order.

218. Where there is no polluter to recover costs from, the relevant body may incur control costs themselves. It should be reiterated that control order will be appropriate where a high-risk species has been detected which is not widespread e.g. where early intervention will save long-term costs) or where a strategic control plan is in place. Relevant bodies already fund control of invasive non-native species and future control costs will be met from that same existing resource, as it is presently. These new provisions will ensure that existing budgets can be targeted more effectively. SNH currently fund control of invasive non-native species through the Species Action Framework as well as funding control of other species. Estimates for control costs have been provided for private individuals, below, and provide the relevant costs if the Scottish Administration decided to take on this work at their cost.

### **Costs to local authorities**

219. Local authorities already control certain invasive non-native species on their land. The new control provisions in the Bill will help to ensure that their existing budgets can be targeted

more effectively, so that for example where a strategic control plan is in place there is less risk of local authority owned or controlled premises being re-infested from adjoining land.

220. It is expected that local authorities would be more likely to enter into a voluntary control agreement with a relevant body if there was a particular species issue. However it would be possible for them to be issued with a control order. As it is unlikely that they would be considered to be the “polluter” (i.e. the one responsible for the species becoming established), it is not expected that they would routinely pay for control costs under compulsory measures. In addition, early action could be viewed in some cases as a long term cost saving.

### **Costs to other bodies, individuals and business**

221. Some individuals already incur control costs for invasive non-native species. In some cases, the Scottish Government provides funding for control costs (in whole or in part) to landowners under the Scottish Rural Development Programme (SRDP) for the control of 5 invasive non-native species .

222. Private control costs can be wasted if the individual is not part of a strategic plan and land is able to become re-infested from land locally. These new control provisions will allow work to be targeted more effectively thereby reducing long-term costs.

223. If individuals do not enter into a voluntary control agreement to deal with a problem, it is possible they may be issued with a control order. If the individual is considered to be the “polluter” then it is expected that the relevant body will either require the individual to carry out the control work according to a management plan, or recoup the costs of carrying out the control work themselves.

224. Costs of carrying out a control order will be dependent on the species involved, their distribution and habitat occupied (e.g. aquatic environment tends to incur higher costs). Because of this there are some example control estimates provided below for different types of species. Costs will depend on the number of animals or plants involved, the habitat they need to be removed from, the degree of establishment and the longer it is before a relevant body is informed of the situation. It is estimated that between 3 and 5 control orders will be made each year across a range of different species types. Using the example costings provided below, if during one year species orders were made for the following:

- one escape of 4 large mammals (costing £450),
- one control order for 5 hectares of woody evergreen shrub (costing £2085),
- two control orders for an herbaceous perennial (one of 50 square metres costing £249; one of 100 square meters costing £498), and
- one control order for the treatment of fish within a large pond (costing £40,000), then total costs could range from **£1,146 to £43,531.**

<b>Species Type</b>	<b>Example species and scenarios</b>	<b>Costs (note that units are not consistent across species due to the differences in control action)</b>
<b>Terrestrial plants</b>	<i>Herbaceous perennial</i> (e.g. Japanese knotweed) Spraying costs are estimated at £1.66 per square metre <sup>a</sup> . However, follow up control would be likely to be needed.	£4.98 per square meter.  (Assuming 3 years spraying is necessary)
	<i>Woody evergreen shrub</i> (e.g. Rhododendron ponticum)	£417 per hectare <sup>b</sup>
<b>Aquatic plant</b>	<i>Floating water plant</i> (e.g. floating pennywort)	£2 per metre <sup>c</sup>
<b>Fish</b>	<i>Small fish</i> (e.g. Topmouth gudgeon) Costs are taken for control undertaken by Environment Agency in 2006 of topmouth gudgeon in small lake. Equipment and logistics was estimated at approx £20,000 and manpower at approx £20,000	£40K small <1ha lake <sup>d</sup>
<b>Mammal</b>	<i>Small mammal</i> (e.g. grey squirrel) Control of grey squirrel in woodland.	£15 per hectare <sup>e</sup>
	<i>Medium mammal</i> (e.g. muntjac deer) A small release of up to 5 animals are likely to be contained within 2-3 days	£450 <sup>f</sup> for up to 5 animals

<sup>a</sup> From Shaw RH, Child LE, Evans HC, Bailey JP (2001). The Biological Control Programme for Japanese Knotweed (*Fallopia japonica*) in the UK and USA.

<sup>b</sup> Combined from Forestry Commission estimated costs and Dehnen-Schmutz K, Perrings C, Williamson M (2004). Rhododendron ponticum in the British Isles: an economic analysis. Journal of Environmental Management 70: 323-332

<sup>c</sup> Combined estimated costs from Environment Agency, British Waterways and CEH

<sup>d</sup> Impact assessment of measures to control the keeping, release and removal of live fish. Defra, 2009.

<sup>e</sup> From Forestry Commission costs and CABI questionnaire (unpublished)

<sup>f</sup> Estimated by Deer Commission for Scotland

## **Benefits**

225. As mentioned above the Bill is intended to have long term positive benefits on the cost of controlling invasive non-native species with an increased focus on prevention.

## **SPECIES LICENSING**

### **Background**

226. The Bill will return all protected species licensing functions under the 1981 Act to Scottish Ministers and provide them with the flexibility to delegate these to SNH or local authorities as appropriate. It is envisaged that there are in practice 3 options relating to the administration of these licensing functions:

- Option 1 - the status quo where the Scottish Government and SNH continue to carry out their licensing functions;
- Option 2 - all licensing functions being transferred to SNH; and
- Option 3 - Scottish Government and SNH continuing to deal with all licence applications except those where planning consent is involved. In those cases, the species licensing would be carried out by the local authority in conjunction with the planning application.

227. The Bill provides for an additional licensable reason. A licence may be issued for conduct affecting the species of animals and plants protected by the 1981 Act to be licensed for social, economic or environmental purposes provided that this will contribute to a significant social, economic or environmental benefit, and there is no other satisfactory solution. This is a new provision and as such it is not possible to directly attribute costs to it. However on the basis of current information there have only been 2 cases where an application could have been made in these circumstances in the last few years.

228. The Bill also removes some species from Schedule 6 of the 1981 Act and is purely streamlining exercise with no cost implications.

### **Costs to the Scottish Administration**

229. There are currently 4 staff employed by Scottish Government to carry out licensing work with a combined annual cost of £109,769 (1xB2, 2xB1, 1xA3). Under Option 1, this would remain unchanged. Under Option 2, this would be saved by Scottish Government but, a similar cost would be incurred by SNH. Under Option 3, roughly 25% of cases based on 2008 figures, the last full year available, there would be a saving in staff costs of £29,370 (explained further below).

### **Costs to local authorities**

230. Options 1 & 2, present no change to local authorities. Based on 2008 figures, Option 3, would equate to 89 cases involving planning consent. These would be spread across 32 local authorities. 89 cases equates to one Scottish Government staff member and dividing the annual salary costs by the number of cases, the cost per case is under £330 pounds. This results in a total

cost to local authorities of a maximum of **£29,370**. The cost to each local authority would therefore be in the range of £0 (where there have been no applications) to £8,250 (Dumfries and Galloway received 25 applications in 2008 – the maximum number). However, local authorities should already be taking legal licence conditions into account when issuing planning consents. The estimation of £29,370 does not take this into account. Therefore it is expected that while £29,370 is estimated as a maximum cost, the financial burden will not be as great as this and any additional costs to local authorities will be in relation to additional administration rather than decision making.

### **Costs to other bodies, individuals and business**

231. Only the destination of the application forms might change so there are no additional costs for the applicant.

### **Benefits**

232. Overall the transfer of licensing functions are expected to be cost neutral.

## **DEER**

### **Background**

233. The Bill proposes changes to deer management, provides an enabling power to permit Ministers to introduce a competence requirement for deer stalking and makes certain changes to exemptions (which allow occupiers to shoot deer during close seasons).

### **Collaborative Deer Management**

234. The Bill will provide for a new Code of Practice to provide guidance on and practical examples of sustainable deer management. The code will clarify how existing statutory powers of intervention will be used to secure the public interest, with a specific duty on public bodies to have regard to advice given to them by SNH (which will take over the functions of the Deer Commission for Scotland on the commencement of section 1 of the Public Sector Reform (Scotland) Act 2010). Deer management will continue to be done on a voluntary basis only, but a greater role is envisaged for Deer Panels as a method of bringing interested parties together to work to find a solution for a local deer management problem. Existing SNH powers of intervention will be refined to allow them to be used more effectively, and in wider circumstances, so as to render the legislation fit for purpose as new deer management issues emerge in the future.

### **Competence**

235. The Bill will provide an enabling power allowing Ministers to introduce a competence requirement for deer stalkers, intended to assure deer welfare and public confidence (the current cost of training in this area ranges from £80 to £280 depending on the nature of the course). The power will not be exercised immediately and the intention is to permit the industry a number of years to continue to raise standards via voluntary initiatives. If Ministers do not exercise this

power there will be a review in 2014. Therefore, no additional costs or burdens are being imposed at this time.

### **Consequential measures**

236. Currently, occupiers are permitted to shoot deer in close season without requiring DCS authorisation, where the deer are causing damage to crops or enclosed forestry. This has led to concern for deer welfare. The Bill proposes that the exemptions be controlled by a system of general authorisation to allow occupiers to shoot during close seasons for certain purposes (protecting crops, pasture or enclosed woodland) provided that they comply with certain conditions. Conditions are likely to include requirements to provide certain information to SNH e.g. cull returns, contact details and restrictions on when deer can be shot (so the authorisation would not cover female deer at times of greatest welfare concern).

### **Costs to the Scottish Administration**

#### *Collaborative Deer Management*

237. DCS estimate that costs can be met within existing resources. Implementation of the Code of Practice will be done on the ground with the support of the deer officers and the collaborative deer management officer. The deer management powers are not new powers but a refocusing of existing powers and hence would not require additional resources.

#### *Consequential measures*

238. It is intended that the process for occupiers obtaining authorisation is straightforward. As such any costs associated with this will be met within existing resources building on the systems and procedures already in place within SNH.

### **Costs to local authorities**

#### *Collaborative Deer Management*

239. DCS do not consider that introducing a new duty on public bodies to have regard to advice and guidance issued in relation to deer management would impact significantly on local authorities. Overall, the new duty that has been proposed is not intended, or expected, to give rise to significant additional expenditure. Expectations in relation to deer management will be set out in a code of practice. Local authorities will be consulted on the development of this code.

240. There will be no additional cost to local authorities in areas where they do not own land, where deer control is not needed, or where they are already considering deer management as part of their wider duties. Where there are new costs involved in meeting the duty, these are likely to be modest and would mostly utilise existing council officers in developing and administering deer control contracts where required. In some circumstances individual deer controllers may be willing to pay for the opportunity to carry out deer management on behalf of a council which would help to offset other costs. In many circumstances local authorities who currently undertake deer management would have no difficulty or increased costs in relation to discharging this duty. Several local authorities are already engaged with DCS and other partners in terms of planning, raising awareness and the active management of deer.

*Consequential measures*

241. The Scottish Government does not consider that any costs are likely to arise to local authorities as the result of consequential measures.

**Costs to other bodies, individuals and business**

*Consequential measures*

242. Individuals such as farmers and foresters would have to familiarise themselves with licence conditions/apply to SNH for authorisation before exercising occupiers' rights to shoot deer in order to protect agricultural production or forestry. However, no fee would be charged for this.

**Benefits**

*Collaborative Deer Management*

243. This will provide positive environmental, economic and social benefits from better deer management – securing condition of designated sites and make better use of resources already invested in deer management.

**BADGERS**

**Background**

244. The Scottish Government considers that the Protection of Badgers Act 1992 (“the 1992 Act”) Act provides an effective legislative framework for the protection of badgers. However, there are two specific anomalies which are addressed in the Bill.

245. The Bill extends section 1, 2, 4 and 5 of the 1992 Act so that it is an offence for a person to knowingly cause or permit any of the offences to which those sections relate. These provisions have no cost implications and none are recorded in this financial memorandum.

246. The Bill also amends the 1992 Act so that offences committed under sections 1(1) and (3) of that Act, relating to the taking, injuring or killing of badgers and the possession of dead badgers are included within the category of offences that may be tried by summary procedure or indictment. These provisions have no cost implications and none are recorded in this financial memorandum.

247. The Bill also amends section 10 of the 1992 Act to transfer licensing functions in relation to badgers in the same way as it transfers licensing functions in relation to species protected under the 1981 Act (see above). The cost implications of this provision are noted below. The Bill will return all protected species licensing functions to Scottish Ministers and provide them with the flexibility to delegate these as appropriate. It is envisaged that there are in practice 3 options relating to the administration of these licensing functions:



- Option 1 - the status quo where Scottish Government and SNH continue to carry out their licensing functions;
- Option 2 - all licensing functions being transferred to SNH; and
- Option 3 - Scottish Government and SNH continuing to deal with all licence applications except those where planning consent is involved. In those cases, the species licensing would be carried out by the local authority in conjunction with the planning application.

### **Costs to the Scottish Administration**

248. Under Options 1 and Options 2 there would be no change to costs to the Scottish Administration.

### **Costs to local authorities**

249. Options 1 & 2, present no change to local authorities. Based on average figures, Option 3, would equate to 20 cases involving planning consent. The staff cost of dealing with these cases is £452 per year. This would be spread across 32 local authorities. This results in a total cost to local authorities of a maximum of **£452**. However, local authorities should already be taking legal licence conditions into account when issuing planning consents. The estimation of £452 does not take this into account. Therefore it is expected that while £452 is estimated as a maximum cost, the financial burden will not be as great as this and any additional costs to local authorities will be in relation to additional administration.

### **Costs to other bodies, individuals and business**

250. Only the destination of the application forms might change so there are no additional costs for the applicant.

### **Benefits**

251. Overall the transfer of licensing functions are expected to be cost neutral.

## **MUIRBURN**

### **Background**

#### *Introducing flexibility in the regulation of muirburn dates*

252. Under the Hill Farming Act 1946 (“the 1946 Act”), muirburn is permitted only between 1 October until a date in April/May which depends on altitude and obtaining the landowner’s permission. The Bill proposes to introduce flexibility in the regulation of muirburn dates by:

- allowing licensed burning outwith the muirburn season (administered by SNH); and
- allowing Ministers to vary the dates of the muirburn season under secondary legislation, for reasons other than to adapt to climate change.

*Removing the May extension to the muirburn season, at altitudes above 450m*

253. Currently, at altitudes above 450m, the muirburn season may be extended from 30 April until 15 May, with the landowner's permission. In order to reduce impacts on nesting birds, the Bill would remove this extension period.

*Neighbour notification*

254. Currently, land managers are required to notify all neighbours in writing at least 24 hours before making muirburn, describing the date, location and approximate size of the burn. The Bill proposes a more flexible notification requirement, where practitioners must notify neighbours of their intention to burn during a muirburn season, giving further details where requested by neighbours. Where the number of people to be notified is 10 or more, there is the option to place an advertisement in a local paper.

**Costs to the Scottish Administration**

255. SNH estimate that they will receive around 10 out of season licence applications per year (based on around 6 applications per year received in England, scaled appropriately for Scotland). SNH estimate that each application will take 2-3 days to assess, to include site visits and consultations with other interested parties. The estimated annual cost is £5,968.

256. The total cost will also include travel and accommodation expenses for site visits where necessary. SNH estimate that these T&S costs will be around £2,639 in 2011/12. Some of the ground assessment will be carried out by Area staff where capacity and knowledge allows, as well as liaison with applicants. The total recurring cost will be **£8,607** per year.

257. There will also be an initial one-off cost to SNH of producing guidance for applicants. SNH estimate that this will require approximately 25 days work to take into account discussions with interested parties and drafting, costing **£5,547** in 2011/12.

258. Research may be required in order to assess the likely environmental impacts of permitting an extended muirburn season and the costs may fall to the Scottish Government. However, the degree of additional research required has not yet been assessed. It will be necessary to undertake a review of existing evidence initially to identify the gaps which require to be addressed through new research.

**Costs to local authorities**

259. There will be no costs to local authorities resulting from these legislative changes.

**Costs to other bodies, individuals and businesses**

260. The level of information which must be submitted in licence returns is yet to be established. However, preparing a simple licence return is likely to cost a minimum of £50 (one hour's work at £50/hour).

261. It is estimated that the cost of preparing a licence application will be £200-£400 (based on half a day to prepare a simple/small application and a full day for a complex/larger application; at professional charge rate of £50/hour). In some circumstances, SNH may request that an ecological survey is included in the application. Such a survey may incur a maximum cost of around £1,000 (to account for 3 days' work by a consultant plus travel and subsistence costs). However, such costs would be exceptional, and most applications will require only an in-house resource. An ecological survey is only likely to be required when burning over a relatively wide area within, or immediately adjacent to, a Natura site with a diversity of qualifying features.

262. The estimated cost of licensing is therefore **£50-£1,400**.

263. If those wishing to make muirburn would require to notify 10 or more people they have the option of advertising in a local paper. The cost of this is estimated to be between £30-£50. This notification is required no more than once a season.

## **Benefits**

### *Savings to land managers*

264. It is possible that the ability to carry out licensed out of season burning will result in increased grouse production (by increasing the quality and area of habitat for grouse), and improved grazing. Out of season licensing may therefore result in financial benefits to the land management sector. Likewise, the power to vary the muirburn season may, if used to extend the season into September, also result in improved grouse production and grazing. However, it is impossible to estimate the potential scale of this financial benefit, as any benefit would be highly dependent on weather, local conditions and other complex and variable factors.

## **SITES OF SPECIAL SCIENTIFIC INTEREST (SSSIS)**

### **Background**

265. The Bill proposes notices requiring the restoration of damage to the natural features of a SSSI; it also provides for the provision of extended powers of entry to land for SNH; additional powers for SNH to extend, merge and denotify SSSIs in certain limited circumstances; and makes minor changes to the Nature Conservation (Scotland) Act 2004.

### **Costs to the Scottish Administration**

266. These changes will result in no additional costs to the Scottish Administration. It is expected that there will be cost savings.

267. The cost to SNH to implement Restoration Notices to implement is less than the current option of enforcement through the courts. There will also be a reduction in costs for the Crown Office with a probable reduction in the number of cases referred to the Procurator Fiscal service.

### **Costs to local authorities**

268. These changes will result in no additional costs to local authorities.

### **Costs to other bodies, individuals and business**

269. The proposal to improve the procedure associated with third party operations under section 13 of the 2004 Act is expected to generate between 10 and 20 additional instances of consultation with SNH for which there is no charge (such applications are normally satisfied in a single written communication).

270. The requirements of a restoration notice would be likely to have financial implication but such a notice would only be served following damage to a SSSI which, in the opinion of SNH, had been the result of an illegal act.; the cost implication depends entirely on the nature and extent of damage (and bearing in mind the broad range of types of SSSI features). Indicative examples of where a restoration notice might be used include the removal of dumped material (where costs will be for actual removal plus any disposal costs), replanting and care of trees that have been removed from a protected woodland, disabling drainage put in without consent or the restoration of habitat following the construction without consent of a hill track on a SSSI where costs for restoration are estimated at being over £5 per metre (and could therefore amount to a significant sum for a track which is several kilometres in length). Prosecution will not follow where the restoration notice has been accepted and complied with.

### **Benefits**

271. The introduction of provision for restoration notices has potential to introduce resource saving for the police, the Crown Office Procurator Fiscal Service and the Scottish Courts Service by providing SNH with an alternative to the only current option which is to seek prosecution. This would also support delivery of the Scottish Government's target to increase to 95% the proportion of protected nature sites in favourable condition.

272. In addition to presenting some modest saving in administrative costs for SNH (e.g. by obviating the need for unnecessary consultation, document maintenance, database management etc); the proposal to provide provision to combine the boundaries of SSSIs in certain circumstances will also help simplify procedures for SNH, other regulatory authorities and land managers.

**SUMMARY TABLE**

<b>Total Costs</b> Where there is a saving -		<b>2011 – 12</b>	<b>2012 – 13</b>	<b>2013 – 14</b> onwards
<b>GAME</b>				
Costs to the Scottish Administration		£0	£0	£0
Costs to local authorities (loss of revenue)		£30,000	£30,000	£30,000
Costs on other bodies, individuals and business	Game Sector	£-30,000	£-30,000	£-30,000
<b>SNARING</b>				
Costs to the Scottish Administration		£0	£0	£0
Costs to local authorities		£0	£0	£0
Costs on other bodies, individuals and business	Snaring Operators	£100,000 to 135,000	£4,000 to 4,500	£4,000 to 4,500
	Police	£12,750 to 21,250	£425	£425
<b>INVASIVE AND NON-NATIVE SPECIES (INNS)</b>				
Costs to the Scottish Administration		£600 to £5000	£600 to £5000	£600 to £5000
Costs to local authorities		£0	£0	£0
Costs on other bodies, individuals and business	Keeping	£500 to £5000	£500 to £5000	£500 to £5000
	Control	£1146 to £43531	£1146 to £43531	£1146 to £43531
<b>SPECIES LICENSING</b>				
Costs to the Scottish Administration	(Option 1)	£0	£0	£0
	(Option 2)	£0	£0	£0
	(Option 3)	£-29,370	£-29,370	£-29,370
Costs to local authorities	(Option 1)	£0	£0	£0
	(Option 2)	£0	£0	£0
	(Option 3)	£29,370	£29,370	£29,370
Costs on other bodies, individuals and business		£0	£0	£0
<b>DEER</b>				
Costs to the Scottish Administration		£0	£0	£0
Costs to local authorities		£0	£0	£0
Costs on other bodies, individuals and business		£0	£0	£0

*These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010*

<b>BADGERS</b>				
Costs to the Scottish Administration		£-452	£-452	£-452
Costs to local authorities		£452	£452	£452
Costs on other bodies, individuals and business		£0	£0	£0
<b>MUIRBURN</b>				
Costs to the Scottish Administration		£14,154	£8,607	£8,607
Costs to local authorities		£0	£0	£0
Costs on other bodies, individuals and business	Land Managers	£50 to 1,400	£50 to 1,400	£50 to 1,400
<b>SITES OF SPECIAL SCIENTIFIC INTEREST (SSSIs)</b>				
Costs to the Scottish Administration		£0	£0	£0
Costs to local authorities		£0	£0	£0
Costs on other bodies, individuals and business		£0	£0	£0
<b>AREAS of SPECIAL PROTECTION (ASPs)</b>				
Costs to the Scottish Administration		£0	£0	£0
Costs to local authorities		£0	£0	£0
Costs on other bodies, individuals and business		£0	£0	£0

## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

273. On 9 June 2010, the Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead MSP) made the following statement:

“In my view, the provisions of the Wildlife and Natural Environment (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010*

## **PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE**

274. On 9 June 2010, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Wildlife and Natural Environment (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Wildlife and Natural Environment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 9 June 2010*

# **WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL**

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

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