Wildlife and Natural Environment (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

**Snares**
6, 26, 27, 28, 29, 30, 31, 8, 32, 33, 34, 35, 36, 37, 9, 38, 39, 40, 41, 42, 43, 44, 53, 10, 11, 12, 13

*Notes on amendments in this group*
Amendment 26 pre-empts amendments 27, 28, 29, 30, 31, 8, 32, 33, 34, 35, 36, 37, 9, 38, 39, 40, 41, 42, 43, 44, 53, 10, 11, 12 and 13

**Single witness evidence**
52

**Protection of certain species of bees**
80

**Exemption of pheasant and red-legged partridge from ban on releasing non-native species etc.; power to disapply exemption**
81, 82, 83

**Power to exempt specified persons and certain types of conduct from ban on releasing non-native species etc.**
59, 60

**Duty to notify presence of invasive plants or animals**
61
Code of practice on non-native species etc.
62, 92, 63, 64, 65, 66, 93, 67, 68, 69, 94, 70, 71, 72, 73, 95, 74, 75, 76

Notes on amendments in this group
Amendment 95 pre-empts amendments 74, 75 and 76

Species control orders
96, 97, 98

Non-native species etc.: interpretation of “native range” and “in the wild”
99, 100

Pesticides: offences etc. and amnesty scheme
101, 102

Granting of licences under the 1981 Act
103, 104, 55, 56

Delegation by Scottish Ministers of licensing function under the 1981 Act
84, 77, 85, 86, 87, 88, 89, 90

Management of geese
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Power to confer certain functions of constables under the 1981 Act on other persons
91

Liability of certain persons for offences committed by others
78, 79

Reviewing of birds and animals included in certain Schedules to the 1981 Act
14

Definition of wildlife crime for reporting purposes etc.
106

Duty to further the conservation of biodiversity
18

Amendments already debated

Causing or permitting certain offences under the 1981 Act
With 45 – 57

Reports on illegal killing of wild birds and wildlife offences generally
With 23 – 58

Protection of wild hares etc.
With 24 – 7, 15, 16, 17
Amendments in debating order

Snares

Roseanna Cunningham

6 In section 7, page 9, line 21, leave out <11D> and insert <11DA>

Marilyn Livingstone

26 In section 11, page 11, line 36, leave out from beginning to end of line 9 on page 15 and insert—

<( ) in subsection (1), for paragraphs (a) and (aa), substitute—

“(a) sets in position or otherwise uses any snare;”,

( ) subsections (3) to (3B) are repealed,

( ) in subsection (3C)—

(i) in paragraph (b), at the beginning insert “manufactures,”,

(ii) the words “which is capable of operating as a self-locking snare or a snare of any other type specified in an order under subsection (1)(a)” are repealed,

( ) subsections (3D) and (3E) are repealed.

( ) In section 16 (power to grant licences)—

(a) in subsection (3), for “11(1), (2) and (3C)(a)” substitute “11(1)(b) and (c), (1)(d) (except in so far as it relates to section 11(1)(a)) and (2)”,

(b) after subsection (4A), insert—

“(4B) Sections 11(1)(a), (1)(d) (in so far as it relates to section 11(1)(a)) and (3C)(a) do not apply to anything done for scientific or research purposes if it is done under and in accordance with the terms of a licence granted by the appropriate authority.

(4C) Section 11(3C)(a) does not apply to anything done for educational purposes if it is done under and in accordance with the terms of a licence granted by the appropriate authority.”.

Liam McArthur

27 In section 13, page 12, line 24, after <number> insert <, and

( ) a unique identification number (“the snare number”) for each snare that the person intends to set,

Liam McArthur

28 In section 13, page 12, line 25, after <numbers> insert <, snare numbers>

Liam McArthur

29 In section 13, page 12, line 32, after <position> insert <and a snare number>
Liam McArthur
30 In section 13, page 12, line 39, leave out <is the identification number> and insert <and the snare number are the numbers>

Liam McArthur
31 In section 13, page 13, line 2, after <number> insert <and snare numbers>

Elaine Murray
8 In section 13, page 13, line 5, at end insert <; and>

Liam McArthur
32 In section 13, page 13, line 7, at end insert <and the number of snare numbers the person applied for.>

Liam McArthur
33 In section 13, page 13, line 14, leave out <has> and insert <and a snare number have>

Liam McArthur
34 In section 13, page 13, line 15, leave out <it is> and insert <they are>

Liam McArthur
35 In section 13, page 13, line 16, leave out <it> and insert <them>

Liam McArthur
36 In section 13, page 13, line 19, after <number> insert <and snare number>

Liam McArthur
37 In section 13, page 13, line 23, after <number> insert <and snare number>

Elaine Murray
9 In section 13, page 13, line 23, at end insert—

Liam McArthur
38 In section 13, page 13, line 26, after <number> insert <and snare number>
Liam McArthur

39 In section 13, page 13, line 30, at end insert <and snare number or, as the case may be, snare numbers;>

Liam McArthur

40 In section 13, page 13, line 34, after <numbers> insert <and snare numbers>

Liam McArthur

41 In section 13, page 13, line 35, after <numbers> insert <and snare numbers>

Liam McArthur

42 In section 13, page 13, line 37, leave out <or identification> and insert <, identification numbers or snare>

Liam McArthur

43 In section 13, page 13, line 39, after <number> and insert <and snare numbers>

Liam McArthur

44 In section 13, page 13, line 39, at end insert—

<( ) Provision made under subsection (8)(a) must require that the person has been trained to set a snare in position only if such training included instruction on animal welfare in relation to the setting of a snare.>

John Scott

53 In section 13, page 13, line 39, at end insert—

<(8A) The Scottish Ministers must take such steps as are reasonably practicable to ensure that, during the period of 2 years beginning with the day on which this section comes into force, sufficient opportunities to access training exist to secure the result mentioned in subsection (8B).

(8B) That result is that all persons who would be required, by virtue of the coming into force of subsections (1) and (5), to cease setting snares in position until issued with an identification number are enabled to receive training within that period of 2 years.

(8C) In subsections (8A) and (8B), “training” means such training as is required in order for an application for an identification number under subsection (4)(a) to be granted.>

Roseanna Cunningham

10 In section 13, page 15, line 4, at end insert—

<11DA Snaring: review and report to the Scottish Parliament

(1) The Scottish Ministers must carry out, or secure the carrying out by another person of, a review of the operation and effect of—

(a) section 11 and any orders made under that section (in so far as the section and the orders make provision as regards snaring);>
(b) sections 11A, 11B, 11C and 11D and any orders made under those sections.

(2) The review must be carried out no later than 31st December 2016.

(3) In carrying out the review, the matters that must be considered include whether in the opinion of the Ministers (or, if the review is being carried out by another person, that person) amendment of this Act or enactment of other legislation is appropriate.

(4) In carrying out the review, the Scottish Ministers (or, if the review is being carried out by another person, that person) must consult such persons and organisations as they consider (or, as the case may be, the other person considers) have an interest in it.

(5) The Scottish Ministers must, as soon as practicable after 31st December 2016, lay a report of the review before the Scottish Parliament.”.

Elaine Murray

11 In section 13, page 15, line 4, at end insert—

<11DA Duty to review snaring regime

(1) The Scottish Ministers must review and publish a report on the operation of the snaring regime—

(a) within 2 years of section 13 (snares) of the Wildlife and Natural Environment (Scotland) Act 2010 (asp 00) coming into force; and

(b) within each subsequent period of 2 years beginning with the publication of a report.

(2) When carrying out a review, the Scottish Ministers must—

(a) have regard to the incidence of offences under section 11(1A);

(b) have regard to the extent to which snares are catching types of animal which they are not intended to catch; and

(c) consult chief constables and any other such person as they consider appropriate.

(3) The Scottish Ministers must have regard to their most recent report when performing functions under the snaring regime.

(4) In this section, “snaring regime” means the provisions of this Part relating to snaring.

Elaine Murray

12 In section 13, page 15, line 4, at end insert—

<11DA Duty to review snaring regime

(1) The Scottish Ministers must review and publish a report on the operation of the snaring regime—

(a) within 5 years of section 13 (snares) of the Wildlife and Natural Environment (Scotland) Act 2010 (asp 00) coming into force; and

(b) within each subsequent period of 5 years beginning with the publication of a report.
(2) When carrying out a review, the Scottish Ministers must—
   (a) have regard to the incidence of offences under section 11(1A);
   (b) have regard to the extent to which snares are catching types of animal
       which they are not intended to catch; and
   (c) consult chief constables and any other such person as they consider
       appropriate.

(3) The Scottish Ministers must have regard to their most recent report when
    performing functions under the snaring regime.

(4) In this section, “snaring regime” means the provisions of this Part relating to
    snaring.

Elaine Murray

13 In section 13, page 15, line 4, at end insert—

<11DB Snares: Scottish Ministers powers to ban use of snares

(1) The Scottish Ministers may by order ban the use, sale, offer for sale or
    exposure for sale of any snare by any person whether or not that person is
    authorised to do so under the provisions of this Part.

(2) An order under subsection (1) must—
   (a) specify the term of the ban;
   (b) define the understanding of snare;
   (c) define the understanding of use, sale, offer for sale and exposure for sale;
       and
   (d) make provision for the monitoring of the ban.

(3) An order under subsection (1) must not be made unless a draft of the statutory
    instrument containing the subordinate legislation has been laid before, and
    approved by resolution of, the Scottish Parliament.

(4) Before laying a draft instrument before the Parliament under subsection (1), the
    Scottish Ministers must consult such persons as they consider appropriate.

(5) For the purposes of such a consultation, the Scottish Ministers must—
   (a) lay a copy of the proposed draft instrument before the Parliament,
   (b) send a copy of the proposed draft instrument to any person to be
       consulted under subsection (4), and
   (c) have regard to any representations about the proposed draft instrument
       that are made to them within 60 days of the date on which the copy of
       the proposed draft instrument is laid before the Parliament.

(6) In calculating any period of 60 days for the purposes of subsection (5)(c), no
    account is to be taken of any time during which the Parliament is dissolved or
    is in recess for more than 4 days.

(7) When laying a draft instrument before the Parliament under subsection (1), the
    Scottish Ministers must also lay before the Parliament an explanatory
    document giving details of—
   (a) the consultation carried out under subsection (4),

(b) any representations received as a result of the consultation, and
(c) the changes (if any) made to the proposed draft instrument as a result of those representations.”.

Single witness evidence

Elaine Murray

52 In section 12, page 11, leave out lines 24 to 31 and insert—

(a) an offence under section 1(1);
(b) an offence under subsections 5(1)(a) to 5(1)(e);
(c) an offence under section 9(1);
(d) an offence under section 10A(1);
(e) an offence under subsections 11(1)(a) to 11(1)(e) or 11(2)(a) to 11(2)(e);
(f) an offence under sections 11B(3), 11C or 11E(1);
(g) an offence under section 13(1);
(h) an offence under sections 14(1) or 14(2).”.

Protection of certain species of bees

Peter Peacock

80 After section 13, insert—

<Bees

Protection of certain species of bees

(1) The 1981 Act is amended as follows.
(2) After section 12YA (inserted by section 11(2)), insert—

“12YB Bee protection areas

(1) The Scottish Ministers may, by order, designate an area as a bee protection area.
(2) An order under subsection (1) may only be made if the Scottish Ministers are satisfied that the health or genetic integrity of colonies of black bees (Apis mellifera mellifera) in an area could be placed at risk if the area was not designated as a bee protection area.
(3) A person who imports bees of a species other than that mentioned in subsection (2) into a bee protection area without being licensed to do so by the Scottish Ministers is guilty of an offence.
(4) The Scottish Ministers may by regulations make provision in relation to the procedure to be followed and the criteria to be applied in relation to the granting of licences for the purpose mentioned in subsection (3).”.

(3) In section 26 (regulations, orders, notices etc.), after subsection (4) insert—
“(4ZA) Subsection (4) does not apply in relation to an order under section 12YB(1) where the Scottish Ministers consider it necessary to make the order urgently.”.

Exemption of pheasant and red-legged partridge from ban on releasing non-native species etc.: power to disapply exemption

Peter Peacock

81 In section 14, page 15, line 29, at end insert <;

but this subsection is subject to subsection (2AA).

<(2AA) The Scottish Ministers may, by order, specify areas in relation to which subsections (2AD) and (2AF) apply.

(2AB) The Scottish Ministers may specify an area in an order under subsection (2AA) only if they are satisfied that, in that area, animals of the types mentioned in subsection (2A) have been, or are being, released or allowed to escape from captivity for the purpose of being subsequently killed by shooting in such numbers that the flora or fauna or any other aspect of the natural environment of the area has been, is being or is at risk of being seriously damaged.

(2AC) An order under subsection (2AA) must specify, in relation to each area specified in the order, the period for which subsections (2AD) and (2AF) are to apply (“the relevant period”).

(2AD) The Scottish Ministers must determine, in relation to each relevant person, the maximum number of animals of each type mentioned in subsection (2A) which that person may, in an area specified in an order under subsection (2AA) and during the relevant period, release or allow to escape from captivity for the purpose of being subsequently killed by shooting.

(2AE) A person who fails to comply with a determination under subsection (2AD) in relation to that person is guilty of an offence.

(2AF) Where the Scottish Ministers are considering specifying an area in an order under subsection (2AA), they may require a person who would, if the area was so specified, be a relevant person to provide them with information on the number of animals of each type mentioned in subsection (2A) which that person, in the area being so considered and in such period as is specified in the requirement, released or allowed to escape from captivity for the purpose of being subsequently killed by shooting.

(2AG) A person who fails to comply with a requirement under subsection (2AF) is guilty of an offence.

(2AH) In subsections (2AD) and (2AF), “relevant person” means a person who, in an area specified in an order under subsection (2AA), releases or allows to escape from captivity for the purpose of subsequently being killed by shooting animals of the types mentioned in subsection (2A).

Peter Peacock

82 In section 17, page 25, line 37, after <insert> insert <", 14(2AE) or (2AG)"
Peter Peacock
83 In section 17, page 26, line 1, after <insert> insert <“(other than under subsections (2AE) or (2AG) of that section)>

Power to exempt specified persons and certain types of conduct from ban on releasing non-native species etc.
Roseanna Cunningham
59 In section 14, page 15, line 33, at end insert—

<(2BA) The Scottish Ministers may, by order, disapply subsection (1) or (2) in relation to—

(a) any person specified in the order;
(b) any conduct undertaken for the purposes of any enactment (including any enactment contained in or made under an Act of the Scottish Parliament) so specified; or
(c) any conduct authorised by, under or in pursuance of any such enactment.>

Roseanna Cunningham
60 In section 14, page 15, line 34, leave out <or (2B)> and insert <, (2B) or (2BA)>

Duty to notify presence of invasive plants or animals
Roseanna Cunningham
61 In section 14, page 17, line 23, at end insert—

<( ) An order under subsection (1) may require a person (or type of person) to make a notification only if the Scottish Ministers consider that the person (or that type of person) has or should have knowledge of, or is likely to encounter, the invasive animal or invasive plant to which the order relates.>

Code of practice on non-native species etc.
Roseanna Cunningham
62 In section 15, page 18, line 2, leave out <issue> and insert <make>

John Scott
92 In section 15, page 18, line 5, after <sections;> insert—

<( ) species control agreements;>

Roseanna Cunningham
63 In section 15, page 18, line 5, leave out <or> and insert—
In section 15, page 18, line 7, leave out <issued under this section>

In section 15, page 18, line 8, at end insert—

how Scottish Natural Heritage, the Scottish Environment Protection Agency, the Forestry Commissioners and the Scottish Ministers should co-ordinate the way in which they exercise their respective functions in relation to animals or plants which are outwith their native range;

In section 15, page 18, line 14, at end insert—

species control orders;

In section 15, page 18, line 30, leave out <best practice (where permitted) for> and insert <compliance with the provisions of this Part in relation to>

In section 15, page 18, line 31, leave out from <or> to <range;> in line 32 and insert <of any type which are invasive or which are kept at a place from which they may not be put outwith the control of any person;

keeping plants of any type which are invasive or which are kept at a place outwith their native range;

In section 15, page 18, line 35, at end insert—

best practice for—

containing, capturing or killing animals of any type which are outwith the control of any person and which are—

(a) at a place outwith their native range; or

(b) animals of a type specified in an order made under section 14(1)(a)(ii);

containing, uprooting or destroying plants of any type which are growing in the wild outwith their native range; and

transferring animals or plants of any type which are not permitted to be kept by virtue of section 14ZC into the custody of Scottish Natural Heritage or any other person (and for keeping such animals or plants prior to the transfer);

the making, content of and enforcement of species control orders.
John Scott

94 In section 15, page 18, line 35, at end insert—

  <( ) the making and content of species control agreements;> 

Roseanna Cunningham

70 In section 15, page 18, line 36, leave out <issued under this section>

Roseanna Cunningham

71* In section 15, page 18, leave out lines 38 to 40 and insert—

  <( ) The first code of practice, and any replacement code of practice, made under
  this section—

    (a) requires to be laid before, and approved by resolution of, the Scottish
    Parliament; and

    (b) comes into effect on such date after approval under paragraph (a) as is
    specified in the code.

  ( ) Any revision to a code of practice (or revocation of a code of practice which is
  not being replaced) must—

    (a) be laid before the Scottish Parliament; and

    (b) specify the date on which it is to come into effect (such date to be at least
    40 days after it is so laid, disregarding any period during which the
    Parliament is dissolved or in recess).

  ( ) The Scottish Parliament may, before any such revision or revocation comes
  into effect, resolve that it is not to come into effect.

  ( ) The Scottish Ministers must publish a code of practice (or any replacement or
  revision) made under this section no later than the day before the code (or
  replacement or revision) is to come into effect.>

Roseanna Cunningham

72 In section 15, page 19, line 1, leave out <issued under this section>

Roseanna Cunningham

73 In section 15, page 19, line 5, leave out <issued under this section>

John Scott

95 In section 15, page 19, leave out lines 10 to 14

Roseanna Cunningham

74 In section 15, page 19, line 10, leave out <or 14B> and insert <, 14B or 14K>

Roseanna Cunningham

75 In section 15, page 19, line 11, leave out <issued under this section>

Roseanna Cunningham

76 In section 15, page 19, line 13, leave out <such>
Species control orders

John Scott

96 In section 16, page 19, line 33, after <failed> insert <, without reasonable excuse,>

John Scott

97 In section 16, page 21, line 8, at end insert—

<(  ) A species control order may make the provision mentioned in subsection (2)(b) only where it appears to the relevant body making the order that the presence of the invasive animal or plant in question is attributable to the actions of the owner or occupier of the premises to which the order relates.>

John Scott

98 In section 16, page 21, line 12, leave out <, or as the case may be,> and insert <and any>

Non-native species etc.: interpretation of “native range” and “in the wild”

John Scott

99 In section 16, page 25, line 7, after <indigenous> insert <and includes reference to any locality where the animal or plant is naturally present only from time to time>

John Scott

100 In section 16, page 25, line 17, at end insert—

<(  ) The expression “in the wild” encompasses both natural and semi-natural habitats and consists of land under no (or only extensive) management that retains its natural or semi-natural character and is not subject to cropping.>

Pesticides: offences etc. and amnesty scheme

Liam McArthur

101 After section 17, insert—

<Offence of being concerned in the supply or use of prescribed ingredients>

Offence of being concerned in the supply or use of prescribed ingredients

(1) The 1981 Act is amended as follows.
(2) In section 15A (possession of pesticides)—

(a) in subsection (1), after “possession of” insert “, or concerned in the supply or use of,”,
(b) in subsection (2), after “possession” insert “, supply or use”,
(c) after subsection (2), insert—
“(2A) Conviction under subsection (1) shall, for the purposes of sections 5 and 11, be presumed to be the equivalent of setting in position or use unless the contrary is proved.”.>

Liam McArthur

102 After section 17, insert—

Pesticides: amnesty scheme

Power to establish a pesticides amnesty scheme

After section 15A of the 1981 Act (possession of pesticides), insert—

“15B Power to establish a pesticides amnesty scheme

(1) The Scottish Ministers may establish a scheme (“a pesticides amnesty scheme”) whereby any person who is in possession of any pesticide containing one or more specified prescribed active ingredient will not be charged with an offence under section 15A if such person voluntarily surrenders such pesticide to a police constable during a time period to be determined by the Scottish Ministers.

(2) Before establishing a pesticides amnesty scheme, the Scottish Ministers may consult—

(a) the procurator fiscal service;
(b) chief constables; and
(c) such other persons as they consider appropriate.

(3) Before any such pesticides amnesty scheme is implemented, the Scottish Ministers may publish the terms of the scheme.”.>

Granting of licences under the 1981 Act

John Scott

103 In section 18, page 27, line 4, at end insert—

“( ) in subsection (1), after paragraph (e), insert—

“(ea) for the purpose of the other judicious use of such birds as the Scottish Ministers may, by order, specify;”.

John Scott

104 In section 18, page 27, line 4, at end insert—

“( ) after subsection (1A) insert—

“(1B) The appropriate authority shall take account of all relevant economic, recreational and environmental factors before granting a licence for any purpose mentioned in subsection (1).”.

Peter Peacock

55 In section 18, page 27, leave out line 8 and insert—
<i>(i) for other imperative reasons of overriding public interest including those of significant social or economic nature and beneficial consequences of primary importance for the environment,”</i>

Peter Peacock

56 In section 18, page 27, leave out lines 9 to 15 and insert—

<i>( ) for subsection (4A) substitute—</i>

“(4A) The appropriate authority shall not grant a licence under subsections (3) or (4) unless it is satisfied—

(a) that there is no other satisfactory solution; and

(b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status.”

Delegation by Scottish Ministers of licensing function under the 1981 Act

Elaine Murray

84 In section 18, page 27, line 32, leave out from <or> to end of line 33

Roseanna Cunningham

77 In section 18, page 27, line 36, leave out <specific species> and insert <a particular type>

Elaine Murray

85 In section 18, page 28, leave out line 7

Elaine Murray

86 In section 18, page 28, leave out lines 8 and 9

Elaine Murray

87 In section 18, page 28, line 12, leave out <or order>

Elaine Murray

88 In section 18, page 28, line 13, leave out <or order>

Elaine Murray

89 In section 18, page 28, line 14, leave out <or order>

Elaine Murray

90 In section 18, page 28, line 15, leave out subsection (4)
**Management of geese**

Liam McArthur

105  After section 19, insert—

"Management of geese

After section 12 of the 1981 Act (protection of certain mammals), insert—

12A Management of geese

(1) The Scottish Ministers must prepare and publish a national policy framework for geese management.

(2) In preparing a national policy framework under subsection (1), the Scottish Ministers must—

(a) consider—

(i) their nature conservation obligations in relation to Directive 79/409/EEC of the European Parliament and the Council on the conservation of wild birds; and

(ii) the impact of geese on agricultural systems and businesses;

(b) consult such persons as they consider appropriate.

(3) Any reference to geese in this section, is a reference to any goose included in schedules 1 and 2.”.

**Power to confer certain functions of constables under the 1981 Act on other persons**

Peter Peacock

91* Before section 20, insert—

"Enforcement: power to confer certain functions on persons other than constables

(1) The 1981 Act is amended as follows.

(2) In section 19 (enforcement), after subsection (8) insert—

“(9) The Scottish Ministers may, by order, provide that the functions conferred on a constable by this section (except the power conferred by subsection (1)(c)) and section 19ZD are also exercisable by a person authorised by them for the purposes of this subsection.

(10) An order under subsection (9) may include such incidental, supplementary or consequential provision (including provision amending this Act) as the Scottish Ministers consider appropriate for the purposes of, in connection with, or for the purpose of giving full effect to subsection (9).

(11) An authorisation under subsection (9)—

(a) shall be in writing;

(b) is subject to any conditions or limitations specified in it;

(c) may be revoked by the Scottish Ministers.”."
(3) In section 26 (regulations, orders, notices etc.)—

(a) in subsection (2), for “and 11(4)” substitute “, 11(4) and 19(9)”,
(b) in subsection (3), for “or 11(4)” substitute “, 11(4) or 19(9)”,
(c) in subsection (4), after “14D” (as inserted by section 17(6)(b)(i)) insert “or 19(9)”,
(d) in subsection (5), after “16A(4)(b)” (as inserted by section 18(4)(b)) insert “or 19(9)”,
(e) after subsection (5), insert—

“(5A) Before laying a draft statutory instrument containing an order under section 19(9) before the Parliament, the Scottish Ministers must consult—

(a) chief constables;
(b) any organisation employees of which the Scottish Ministers would intend, in the event of the order being made, to authorise under section 19(9); and
(c) such other persons (if any) as they consider appropriate.

(5B) For the purposes of such a consultation, the Scottish Ministers must—

(a) lay a copy of the proposed draft order before the Parliament;
(b) send of copy of the proposed draft order to any person to be consulted under subsection (5A); and
(c) have regard to any representations about the proposed draft order that are made to them within 60 days of the date on which the copy of the proposed draft order is laid before the Parliament.

(5C) In calculating any period of 60 days for the purposes of subsection (5B)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

(5D) When laying a draft statutory instrument containing an order under section 19(9) under subsection (3), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—

(a) the consultation carried out under subsection (5A);
(b) any representations received as a result of the consultation; and
(c) the changes (if any) made to the proposed draft order as a result of those representations.”.>

Liability of certain persons for offences committed by others

Roseanna Cunningham 78

After section 20, insert—

<Offences by Scottish partnerships etc.

After section 69 of the 1981 Act (offences by bodies corporate etc.), insert—
69A Offences by Scottish partnerships etc.

Where a Scottish partnership or other unincorporated association is guilty of an offence under Part 1 of this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) in relation to a Scottish partnership, any partner or any person who was purporting to act in such capacity;

(b) in relation to an unincorporated association other than a Scottish partnership, any person who is concerned in the management or control of the association or any person who was purporting to act in any such capacity,

he (as well as the partnership or, as the case may be, other unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.”.

Roseanna Cunningham

79 After section 20, insert—

Liability in relation to certain offences by others

After section 18 of the 1981 Act insert—

18A Vicarious liability for certain offences by employee or agent

(1) This subsection applies where, on or in relation to any land, a person (A) commits a relevant offence while acting as the employee or agent of a person (B) who—

(a) has a legal right to kill or take a wild bird on or over that land; or

(b) manages or controls the exercise of any such right.

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

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

(a) that B did not know that the offence was being committed by A; and

(b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.

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

(5) For the purposes of subsection (1)(b), management or control of the exercise of a right to kill or take any wild bird on or over land includes in particular management or control of any of the following—

(a) the operation or activity of killing or taking any such birds on or over that land;

(b) the habitat of any such birds on that land;

(c) the presence on or over that land of predators of any such birds;
(d) the release of birds from captivity for the purpose of their being killed or taken on or over that land.

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

(a) an offence under—

(i) section 1(1), (5) or (5B); 
(ii) section 5(1)(a) or (b); or
(iii) section 15A(1); and

(b) an offence under section 18 committed in relation to any of the offences mentioned in paragraph (a).

18B Liability where securing services through another

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

(a) a person (A) commits a relevant offence;
(b) at the time the offence is committed, A is providing relevant services for B; and
(c) B—

(i) has a legal right to kill or take a wild bird on or over that land; or
(ii) manages or controls the exercise of any such right.

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

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

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

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

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

(a) if A manages or controls any of the following—

(i) the operation or activity of killing or taking any wild birds on or over that land;
(ii) the habitat of any such birds on that land;
(iii) the presence on or over that land of predators of any such birds;
(iv) the release of birds from captivity for the purpose of their being killed or taken on or over that land; and

(b) whether A is providing the services—

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

**Reviewing of birds and animals included in certain Schedules to the 1981 Act**

Elaine Murray

14 After section 20, insert—

*<Functions of conservation bodies>*

**Functions of conservation bodies**

In section 24 of the 1981 Act (functions of GB conservation bodies), in subsection (1)—

(a) for the word “5” substitute “A1, 1, 1A, 2, 3, 4, 5, 5A, 6, 6A”;

(b) after “opinion” insert—

“(za) any bird should be added to, or removed from, Schedule A1;

(zb) any bird should be added to, or removed from, Schedule 1;

(zc) any bird should be added to, or removed from Schedule 1A;

(zd) any bird should be added to, or removed from, Schedule 2;

(ze) any bird should be added to, or removed from, Schedule 3;

(zf) any bird should be added to, or removed from, Schedule 4;”,

(c) after paragraph (a) insert—

“(aa) any animal should be added to, or removed from Schedule 5A;

(ab) any animal should be added to, or removed from Schedule 6;

(ac) any animal should be added to, or removed from Schedule 6A;”.

**Definition of wildlife crime for reporting purposes etc.**

Liam McArthur

106 After section 20, insert—

*<Reporting on and responding to wildlife crime>*

**Reporting on and responding to wildlife crime**

After section 19ZD of the 1981 Act (power to take samples: Scotland), insert—

“19ZDA Reporting on and responding to wildlife crime

(1) Scottish Ministers must ensure that every police force applies the definition of wildlife crime under subsection (2) for the purposes of reporting on and responding to such wildlife crimes.

(2) In this section, “wildlife crime” means any unlawful act or omission, which affects any wild bird or animal, plant or habitat.”.