Wildlife and Natural Environment (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 21               Schedule
Sections 22 to 35               Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 7

Roseanna Cunningham

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

Roseanna Cunningham

7 In section 7, page 9, line 39, at end insert—

<(3) Nothing in section 11E makes unlawful—

(a) anything done in pursuance of a requirement by the Scottish Ministers under section 39 of the Agriculture (Scotland) Act 1948; or

(b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981.”.>

Section 12

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)(c) 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)”."
Section 13

Marilyn Livingstone

26 In section 13, 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(  ) subsections (3) to (3B) are repealed,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of operating as a self-locking snare or a snare of any other type specified in an order under subsection (1)(a)” are repealed,

(  ) subsections (3D) and (3E) are repealed.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

( ) on being satisfied that the applicant has found such other methods for the capture and control of wild animals, as the Scottish Ministers may determine, to be ineffective,>

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—

<() what other methods for the control and capture of wild animals an applicant for an identification number must find to be ineffective before making such an application;

() how a chief constable is to be satisfied that an applicant for an identification number has found other methods for the control and capture of wild animals to be ineffective;>

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—

<s11DB 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.”.

After section 13

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.”.

Section 14

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).

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)>
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.>

Section 15

In section 15, page 18, line 2, leave out <issue> and insert <make>

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

<(  ) species control agreements;>

In section 15, page 18, line 5, leave out <or> and insert—

<(  ) species control orders;>

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;

Roseann a Cunningham

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

<(  ) best practice for—

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

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

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

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

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

Roseann a Cunningham

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

<(  ) 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;>

Roseann a Cunningham

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

Roseann a 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>

Section 16

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>
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.>

Section 17

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)>

After section 17

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.

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) 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,",".

Peter Peacock

56 In section 18, page 27, leave out lines 9 to 15 and insert—
   "(  ) for subsection (4A) substitute—
   "(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
that the action authorised will not be detrimental to the maintenance of
the population of the species concerned at a favourable conservation
status."

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)

After section 19

Liam McArthur
57 After section 19, insert—

<Offence of knowingly causing or permitting certain offences>

Offence of knowingly causing or permitting certain offences under the 1981 Act

(1) The 1981 Act is amended as follows.

(2) In section 6 (sale etc. of live or dead wild birds, eggs etc.), after subsection (2), insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or
permits to be done an act which is made unlawful by any of the foregoing
provisions of this section (other than subsections (1)(b) and 2(b)) shall be
guilty of an offence.”.

(3) In section 15A (possession of pesticides), after subsection (1), insert—
“(1A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by subsection (1) shall be guilty of an offence.”.

(4) In section 18 (attempts to commit offences etc.), after subsection (2), insert—

“(2A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by subsection (2) shall be guilty of an offence.”.

Liam McArthur

105 After section 19, insert—

<Management of geese

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.”.

Before section 20

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.”.

After section 20

Roseanna Cunningham
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 a 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.”

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—
   (i) by arrangement between A and B; or
(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).”.

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;”.

Peter Peacock

58 After section 20, insert—

<Reporting

Annual report on wildlife crimes

After section 26A of the 1981 Act (enforcement of wildlife legislation), insert—

“26B Annual report on wildlife crimes

(1) The Scottish Ministers must as soon as practicable after the end of each calendar year lay before the Parliament a report on the incidence of wildlife offences under this Act in the reporting year.

(2) In preparing a report under subsection (1), the Scottish Ministers may require wildlife inspectors to provide them with such information as they consider necessary to fulfil the requirements of that subsection.”.

Liam McArthur

106 After section 20, insert—
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.”.

Section 21

Roseanna Cunningham

15 In section 21, page 29, line 33, at end insert—

<( ) The modifications in Part 1 of the schedule have effect.>

Roseanna Cunningham

16 In section 21, page 29, line 34, after <of> insert <Part 2 of>

Schedule

Roseanna Cunningham

17 In the schedule, page 50, line 3, at end insert—

<PART 1
MODIFICATIONS

In section 39(2) of the Agriculture (Scotland) Act 1948 (c.45), in the proviso, for the words from “game” to the end substitute “—

(a) black grouse, common pheasant, grey partridge, ptarmigan, red grouse or red-legged partridge in the close season for that bird (within the meaning of section 2(4) of the Wildlife and Countryside Act 1981 (c.69)); or

(b) brown hare or mountain hare in close season for that hare (within the meaning of section 10A(2) of that Act);

and for the purposes of subsection (1) a person is not deemed not to have the right to comply with a requirement falling within this proviso by reason only that, apart from the proviso, compliance with the requirement would constitute an offence under section 1 or (as the case may be) 10A(1) of that Act”.>

After section 27

Elaine Murray

18 After section 27, insert—
Duty to further the conservation of biodiversity

In section 1 (duty to further the conservation of biodiversity) of the 2004 Act, in subsection (2)—

(a) the word “and” immediately following paragraph (a) is repealed,

(b) in paragraph (b), after “Convention)”, insert “and

(c) the ecological coherence and connectivity of features of value to biodiversity.”.