Wildlife and Natural Environment (Scotland) Bill

3rd 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.

After section 20

Elaine Murray

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

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."
(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”.>

Before section 22

Robin Harper

Before section 22, insert—

Duty of sustainable deer management

Before section 1 of the 1996 Act insert—

“PART A1
SUSTAINABLE DEER MANAGEMENT

A1 Duty of sustainable deer management

It is the duty of—

(a) a public body or office-holder owning, occupying or otherwise controlling land on which deer are found;

(b) an owner or occupier of land on which deer are found,

to further the sustainable management of deer on that land by complying with a code of practice drawn up under section 5A of this Act.”.

Section 22

Roseanna Cunningham

In section 22, page 30, line 7, leave out <; and>

Roseanna Cunningham

In section 22, page 30, line 20, at end insert—

( ) In section 18(2) (taking or killing at night), for paragraph (a) substitute—

“(a) the taking or killing is necessary—

(i) to prevent damage to crops, pasture, human or animal foodstuffs, or to woodland; or

(ii) in the interests of public safety;”.

Section 23

Liam McArthur

In section 23, page 30, line 27, leave out <may, in particular> and insert <must>
Liam McArthur

110 In section 23, page 30, line 32, at beginning insert—

<(  ) The code of practice may> 

Liam McArthur

111 In section 23, page 30, line 33, at end insert—

<(  ) The recommendations referred to in subsection (2)(a) must cover arrangements for the setting and implementation of culling targets to achieve sustainable deer population levels.> 

Liam McArthur

152 In section 23, page 30, line 33, at end insert—

<(  ) The recommendations and provisions referred to in subsection (2)(a) and (b) must cover arrangements for collaboration on deer management planning between the owners and occupiers of land within deer natural ranges.> 

Liam McArthur

112 In section 23, page 30, line 34, at end insert—

<(  ) Without prejudice to subsection (3), SNH must review the contents and operation of the code of practice at least once every 5 years and, as appropriate, propose revisions to, or replacement of, the code.> 

Roseanna Cunningham

113 In section 23, page 30, line 35, leave out <revising or replacing> and insert <replacing or revising> 

Roseanna Cunningham

114 In section 23, page 30, line 37, after second <proposed> insert <replacement or> 

Roseanna Cunningham

115 In section 23, page 31, line 3, after second <proposed> insert <replacement or> 

Roseanna Cunningham

116 In section 23, page 31, line 5, after first <or> insert <replacement or> 

Roseanna Cunningham

117 In section 23, page 31, line 5, after third <or> insert <replacement or> 

John Scott

158 In section 23, page 31, leave out lines 7 to 11 and insert—

<(  ) The first code of practice, and any replacement code of practice, made under this section must—
(a) be laid before, and approved by resolution of, the Scottish Parliament; and
(b) come into effect on such date after approval under paragraph (a) as is specified in the code.

( ) Any revision to a code of practice 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 such revision 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.

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**Roseanna Cunningham**

118 In section 23, page 31, line 7, after «any» insert «replacement or»

**Roseanna Cunningham**

119 In section 23, page 31, line 8, leave out from «be» to end of line 9 and insert—

«( ) be laid by the Scottish Ministers before the Scottish Parliament; and
( ) 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 code of practice (or any replacement or revision) 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) no later than the day before the code (or replacement or revision) is to come into effect.»

**Roseanna Cunningham**

120 In section 23, page 31, leave out lines 10 and 11

**Liam McArthur**

121 In section 23, page 31, line 13, after «section;» insert—

«( ) publish a report on at least an annual basis relating to—
(i) the extent of compliance,
(ii) the extent of non-compliance,
(iii) actions taken to address instances of non-compliance,
with such a code;»
In section 23, page 31, line 18, leave out from <laid> to <and> in line 19

After section 23

After section 23, insert—

“Deer management planning by SNH

5B Deer management planning by SNH

(1) Where SNH is satisfied that the conditions in subsection (2) have been met in relation to a particular area, it may make an order requiring the owners and occupiers of that particular area to draw up a deer management plan.

(2) The conditions are that—

(a) having had regard to the code of practice, SNH is satisfied that a deer management plan is required for that particular area; and

(b) no such plan has been drawn up by the owners and occupiers of that particular area.

(3) An order under subsection (1) must—

(a) specify the particular area of land to which it applies; and

(b) be served on all of the owners and occupiers of that particular area of land.

(4) The owners and occupiers to whom the order under subsection (1) applies must work together to draw up a deer management plan.

(5) Where SNH is satisfied that the conditions in subsection (6) have been met, SNH may itself prepare and publish a deer management plan for that particular area of land.

(6) The conditions are that—

(a) a period of at least 12 months has elapsed since the serving of an order under subsection (1);

(b) a deer management plan has not been drawn up by the owners and occupiers of the particular area of land to which the order relates.

(7) Where SNH has published a deer management plan under subsection (5)—

(a) it shall send a copy of the plan to all owner and occupiers on whom the order under subsection (1) was served; and

(b) those owners and occupiers, so notified, must take such deer management measures as are specified in the plan.

(8) Where SNH make an order under subsection (1), this must be considered as non-compliance with the code of conduct on the part of those owners and occupiers on whom the order is served.
(9) Section 9 of this Act (recovery of expenses) applies to expenses incurred by SNH in the performance of its duties under this section as it applies in relation to section 8(8)."

(2) In section 13(1) (offences in relation to Part II) of the 1996 Act, after “a control scheme”, insert “, or section 5B(7)(b),”.

**Section 24**

**Liam McArthur**

124 In section 24, page 31, line 26, at end insert—

"( ) after “is satisfied that” insert “a case of non-compliance with the code requires addressing by means of measures under this section or section 8, or that”,”

**John Scott**

159 In section 24, page 31, line 40, at end insert—

"( ) before “taking” insert “exclusion of or the”,”

**John Scott**

160 In section 24, page 32, line 2, at end insert—

"( ) after “be” insert “excluded,”,”

**Liam McArthur**

125 In section 24, page 32, line 40, after <repealed,> insert—

"( ) for subsection (6) substitute—

“(6) A control scheme under this section shall be treated as a land management order under Chapter 3 of the Nature Conservation (Scotland) Act 2004 (asp 6), insofar as the procedures (schedule 3 to that Act) and appeals (section 34 (appeals in connection with land management orders and related orders) of that Act) are concerned, and schedule 3 and section 34 of the 2004 Act shall apply to control schemes as they do to land management orders.”,”

**Roseanna Cunningham**

126 In section 24, page 33, line 6, leave out <or>

**John Scott**

161 In section 24, page 33, line 10, at end insert <,

"( ) in paragraph (a), after “land” insert “, but only if SNH is satisfied that situation cannot be remedied by exclusion”,”

**Roseanna Cunningham**

127 In section 24, page 33, line 10, at end insert—
In schedule 2 (provisions as to control schemes)—

(a) in paragraph 1(b)—

(i) for the words from “two” to “situated” substitute “such manner as SNH thinks fit”,
(ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,

(b) in paragraph 3, for the words from “shall” to “may” substitute “—

(a) must consider the objection, and
(b) may”,

(c) in paragraph 4—

(i) the word “either” where it first occurs is repealed,
(ii) the words from “; or” to the end are repealed,

(d) in paragraph 6(b)—

(i) for the words from “two” to “situated” substitute “such manner as the Scottish Ministers think fit”,
(ii) in sub-sub-paragraph (iii), the words “within the district” are repealed,

(e) in paragraph 8, for the words from “shall” to “may” where it second occurs substitute “—

(a) must consider the objection, and
(b) may”,

(f) in paragraph 9—

(i) the word “either” where it first occurs is repealed,
(ii) the words from “; or” to the end are repealed,

(g) paragraph 11 is repealed,

(h) in paragraph 12(b)—

(i) for the words from “the” where it first occurs to “situated” substitute “such manner as the Scottish Ministers think fit”,
(ii) in sub-sub-paragraph (ii), the words “within the district” are repealed,

(i) in paragraph 13—

(i) in sub-paragraph (1), for “and (3)” substitute “to (4)
(ii) for sub-paragraphs (2) and (3) substitute—

“(2) Any owner or occupier of land who is aggrieved by—

(a) a decision of the Scottish Ministers to—

(i) confirm a control scheme,
(ii) make a scheme varying a control scheme, or
(iii) revoke a control scheme, or
(b) the terms or conditions of such a scheme, may appeal to the Scottish Land Court.
(3) An appeal under sub-paragraph (2) must be lodged not later than 28 days after the date of publication of the notice referred to in paragraph 12(b).

(4) The Scottish Land Court must determine an appeal under sub-paragraph (2) on the merits rather than by way of review and may do so by—
   
(a) affirming the control scheme,
   
(b) directing the Scottish Ministers to revoke the scheme,
   
(c) making such other order as it thinks fit.”.

Liam McArthur

128 In section 24, page 33, line 10, at end insert—
   
<(  ) Schedule 2 (provisions as to control schemes) is repealed.>

Section 25

John Scott

162 In section 25, page 33, line 15, at end insert—
   
<(  ) after “them” insert “to exclude or”,>

John Scott

163 In section 25, page 33, line 17, after <the> insert <exclusion,>

Roseanna Cunningham

129 In section 25, page 33, line 36, at end insert—
   
<(  ) in the title, the word “serious” is repealed,>

Roseanna Cunningham

130 In section 25, page 33, line 37, at end insert—
   
<(  ) the word “serious” is repealed,>

John Scott

164 In section 25, page 33, line 37, at end insert—
   
<(  ) before “take” insert “exclude or to”,>

Section 26

John Scott

165 In section 26, page 35, line 33, at end insert—
   
<(  ) Before making regulations under subsection (1), the Scottish Ministers must consult any person appearing to them to have an interest in the regulations.>
After section 26

Roseanna Cunningham

131 After section 26, insert—

<Offences by bodies corporate, Scottish partnerships etc. under the 1996 Act

(1) The 1996 Act is amended as follows.

(2) In section 29 (offences by bodies corporate)—

(a) the existing text becomes subsection (1),

(b) after that subsection, insert—

“(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.”.

(3) After that section, insert—

“29A Offences by Scottish partnerships etc.

Where an offence under this Act has been committed by a Scottish partnership or other unincorporated association and it 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 was 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.”.>

John Scott

166 After section 26, insert—

<Action intended to prevent suffering

(1) The 1996 Act is amended as follows.

(2) In section 25 (action intended to prevent suffering)—

(a) before paragraph (a), insert—

“(za) a deer which is starving and which has no reasonable chance of recovering;”,

(b) in paragraph (b), the word “by” is repealed.>
After section 27

Elaine Murray
18* After section 27, insert—

<Biodiversity>

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) after paragraph (b), insert “, and
(c) the ecological coherence and connectivity of features of value to biodiversity.”.

Peter Peacock
153* After section 27, insert—

<Biodiversity>

Scottish Biodiversity Strategy: content of reports to Scottish Parliament

In section 2 (Scottish Biodiversity Strategy) of the 2004 Act, after subsection (7), insert—

“(8) A report laid before the Scottish Parliament under subsection (7) must—

(a) include such a list of public bodies as determined by the Scottish Ministers, and

(b) for each listed body, a record of actions taken in the three years covered by the report to implement the strategy and fulfil the duty under section 1.”.

Bill Wilson
154* After section 27, insert—

<Biodiversity>

Scottish Biodiversity Strategy: specification of actions and persons responsible for actions

In section 2 (Scottish Biodiversity Strategy) of the 2004 Act, after subsection (3), insert—

“(3A) Any strategy so designated must specify—

(a) those actions which the Scottish Ministers consider will contribute materially to the conservation of biodiversity, and

(b) those persons, or categories of person, whom the Scottish Ministers consider are or should be responsible for the carrying out of those actions.”.
Robin Harper

155* After section 27, insert—

Scottish Biodiversity Strategy: objectives

In section 2 (Scottish Biodiversity Strategy) of the 2004 Act, after subsection (3), insert—

“(3B) A strategy designated under subsection (1) must set out the Scottish Ministers’ objectives in relation to the conservation of biodiversity, together with how—

(a) an ecologically coherent network of protected areas,
(b) species and habitat conservation measures,
(c) land use policies,
(d) town and country planning policies,
(e) marine planning policies, and
(f) such other policies as they consider relevant,

will contribute to the achievement of those objectives.”.

Section 28

Roseanna Cunningham

132 In section 28, page 40, line 28, leave out <, reduce or vary> and insert <or reduce>

Roseanna Cunningham

133 In section 28, page 41, line 7, at end insert—

<23AA Extension of muirburn season under section 23A(1): further regulation

(1) Where the standard muirburn season or the extended muirburn season is extended for any land by an order under section 23A(1), the Scottish Ministers may by order make provision regulating the making of muirburn during the additional period.

(2) Any provision so made applies in addition to the regulation by the provisions of this Act of the making of muirburn during the standard muirburn season or the extended muirburn season.

(3) An order under subsection (1) may make provision—

(a) as to the giving of notice;
(b) as to the making, to the Scottish Ministers or a specified person, of representations or objections;
(c) as to the consideration by the Ministers or a specified person of any such representations or objections;
(d) requiring the approval of the Ministers or a specified person for the making of muirburn;
(e) as to such approval being able to be subject to conditions;
(f) as to the making of muirburn being subject to conditions specified in the order;
(g) creating offences;
(h) providing that any offence created is triable only summarily;
(i) providing for any offence created to be punishable by a fine not exceeding level 3 on the standard scale;
(j) as to such other regulation of the making of muirburn as the Scottish Ministers consider appropriate.

(4) Conditions specified in pursuance of subsection (3)(f) may refer to matters specified elsewhere.

(5) In—
(a) subsection (1), “the additional period” means the period for which the standard muirburn season or, as the case may be, the extended muirburn season is extended for the time being for any land by an order under section 23A(1);
(b) subsection (3), “specified person” means a person specified in the order.

(6) The power conferred by subsection (1) is exercisable by statutory instrument.

(7) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Roseanna Cunningham
134 In section 28, page 42, line 4, at end insert—
<(  ) In section 24 (right of tenant to make muirburn notwithstanding terms of lease), after subsection (2) insert—
“(2A) Notice by a tenant to a proprietor of land under subsection (2)—
(a) must be in writing; and
(b) may be given to any person purporting to be authorised by the proprietor to receive the notice.”.>.

Roseanna Cunningham
135 In section 28, page 42, line 12, after <muirburn)> insert—
<(  ) for the title, substitute “Notice as to muirburn: general requirement”,
( )>.

Roseanna Cunningham
136 In section 28, page 42, line 13, leave out from beginning to <given> in line 15 and insert—
<(  ) A person who intends to make muirburn during the muirburn season must give notice in writing under this section>.

Roseanna Cunningham
137 In section 28, page 42, leave out line 20 and insert—
(An order under section 23AA(1) may make provision as to other notice to be given in relation to certain periods; and section 24(2) makes provision as to other notice to be given by a tenant.)

Roseanna Cunningham
138 In section 28, page 42, line 21, leave out <under subsection (2) if the person> and insert <(“A”) under this section if A>

Roseanna Cunningham
139 In section 28, page 42, line 22, leave out <that the person> and insert <to the person intending to make muirburn that A>

Roseanna Cunningham
140 In section 28, page 42, line 26, after <notice> insert <under this section>

Roseanna Cunningham
141 In section 28, page 42, line 29, leave out <The notice> and insert <Notice under this section>

Roseanna Cunningham
142 In section 28, page 42, leave out lines 40 and 41

Roseanna Cunningham
143 In section 28, page 43, leave out lines 6 and 7

Roseanna Cunningham
144 In section 28, page 43, line 8, leave out <or section 24(2)>

Roseanna Cunningham
145 In section 28, page 43, line 14, at end insert <under section 24(2) or 26>

Roseanna Cunningham
146 In section 28, page 43, line 16, leave out <24> and insert <24(2)>

Roseanna Cunningham
147 In section 28, page 43, line 39, after <muirburn)> insert—

   <(  ) in the title, for “Offences” substitute “Penalties etc. for offences”,

   (  )>
After section 28

Roseanna Cunningham

148 After section 28, insert—

<Offences by bodies corporate, Scottish partnerships etc. under the 1946 Act

After section 34 of the 1946 Act, insert—

“34A Offences by bodies corporate etc.

(1) Where an offence under this Act has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body; or

(b) a person who purported to act in any such capacity,

he (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act has been committed by a Scottish partnership or other unincorporated association and it is proved to have been committed with the consent or connivance of, or 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 was 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.”.>

Bill Wilson

156 After section 28, insert—

<Tree conservation areas

(1) The Town and Country Planning (Scotland) Act 1997 (c.8) is amended as follows.

(2) After section 171, insert—

“171A Tree conservation areas

A planning authority may, if they consider it desirable to preserve or protect a tree, group of trees or woodland in their district, designate the area in which the tree, group of trees or woodland is situated as a tree conservation area.”.
(3) In section 172 (preservation of trees in conservation areas), in subsection (2), after “area” insert “or a tree conservation area”.

After section 31

Robin Harper

157* After section 31, insert—

<SSSIs: planning applications with adverse effect on natural features

In the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432), after regulation 25, insert—

“25A Applications adversely affecting a site of special scientific interest (SSSI)

(1) This regulation applies where the conditions in paragraph (2) are met.

(2) Those conditions are that—

(a) in relation to a development proposal, Scottish Natural Heritage (SNH) has been consulted in accordance with Regulation 25 and paragraph 2 of Schedule 5; and

(b) SNH has advised that the development proposal, referred to in paragraph (a), would, if approved and proceeded with, lead to the destruction or damage to a natural feature specified in an SSSI notification.

(3) Before determining any application to which this regulation applies, a planning authority must consult SNH on the measures that may be taken to mitigate or compensate for, as far as practicable, the destruction or damage to a natural feature specified in an SSSI notification.

(4) Any decision to approve an application to which this regulation applies must be subject to conditions that ensure that the measures, advised by SNH under paragraph (3), are taken.

(5) The conditions referred to in paragraph (4) may require actions by the applicant or by any other person or body but, in the case of such other person or body, approval of the condition must be subject to the consent of that person or body who may require the applicant to fund their actions.”.

Section 32

Roseanna Cunningham

149 In section 32, page 48, line 6, at end insert—

<( ) In section 8B(1) (protection afforded to spent alternatives) of the Rehabilitation of Offenders Act 1974 (c.53), after paragraph (c) insert—

“(ca) has, under subsection (5) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6), given notice of intention to comply with a restoration notice given under subsection (4) of that section.”.
Section 33

Roseanna Cunningham

150 In section 33, page 49, line 5, at end insert—

<( ) After section 27 of the 1946 Act, insert—

“27A Crown application: sections 23 to 27

(1) Sections 23 to 27 (including orders made under section 23AA) of this Act bind the Crown.

(2) No contravention by the Crown of any provision made by or under sections 23 to 27 of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing those provisions, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), sections 23 to 27 (including orders made under section 23AA) apply to persons in the public service of the Crown as they apply to other person.”.

( ) After section 66A of the 1981 Act, insert—

“66B Application of Part 1 to Crown: Scotland

(1) Subject to subsections (2) to (5), Part 1 (including regulations and orders made under it) bind the Crown.

(2) No contravention by the Crown of any provision made by or under Part 1 makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), any provision made by or under Part 1 applies to persons in the public service of the Crown as it applies to other persons.

(4) A species control order may be made under section 14D in relation to Crown land only with the consent of the appropriate authority.

(5) The powers conferred by sections 14M and 19ZC are exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In this section, “Crown land” means an interest in land which—

(a) belongs to Her Majesty in right of the Crown;

(b) belongs to Her Majesty in right of Her private estates;

(c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or

(d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.

(7) In this section, the “appropriate authority”—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
(b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;

(c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;

(d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;

(e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.

(8) The references in subsections (6)(b) and (7)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

( ) After section 13 of the 1992 Act, insert—

“13A Crown application: Scotland

(1) This Act binds the Crown.

(2) No contravention by the Crown of any provision of this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), this Act applies to persons in the public service of the Crown as it applies to other persons.”.

( ) In section 44 of the 1996 Act—

(a) for subsection (1), substitute—

“(1) This Act binds the Crown, subject to such modifications as may be prescribed.”,

(b) after subsection (2), insert—

“(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (3), this Act applies to persons in the public service of the Crown as it applies to other persons.

(5) The power conferred by section 15 of this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In subsection (5), “Crown land” means an interest in land which—

(a) belongs to Her Majesty in right of the Crown;
(b) belongs to Her Majesty in right of Her private estates;
(c) belongs to an office-holder in the Scottish Administration or is held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration; or
(d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department”.

(7) In subsection (5), the “appropriate authority”—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
(b) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who or, as the case may be, government department which manages the land;
(c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;
(d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, means that office-holder;
(e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that government department.

(8) The references in subsections (6)(b) and (7)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”>