

WILDFOWL LAW

By L. M. Baker, M.B.E., F.Z.S.

[As new legislation is proposed for the protection of birds, a proper understanding of the law as it stands at present is important to all those interested in wildfowl. —ED.]

IN a previous Report it was mentioned that the Trust was established to promote the study of wildfowl, and to establish and maintain a wildfowl research observatory. Those are of course the primary objects ; but since, as the Report stated, the study of wildfowl has not only a scientific and educational interest, but also a particular application to the decline in the world stocks of many species of ducks, geese and swans, the question of the protection of these birds from undue destruction can never be wholly absent from other considerations concerning them.

The law as it stands for the preservation of wild birds generally is contained in a number of statutes with the Act of 1880 as the first, and principal, among them ; that relating to wildfowl in particular is contained in an Act entitled the Wild Birds (Duck and Geese) Protection Act, 1939. This Act deals specifically with wild duck and geese as defined in it. Swans, and the generality of waders, are subject to the provisions of the general wild birds protection legislation.

Up to the time of the passing of the Act of 1939, wild duck and geese were similarly protected by the general laws. It had, however, long been considered that, because of the peculiar status of these birds—as ‘articles of diet’ and as quarry for the sportsman—the laws so far enacted did not meet their case. It is perhaps unnecessary to enlarge on the considerations in which the 1939 Act came about ; they arise, of course, from the general premise, and will be readily understood by all who are knowledgeable about wildfowl. But a knowledge of the Act itself is of importance to those who, for whatsoever reason, concern themselves with the welfare and survival of our wildfowl, and the following short summary of its provisions may be of interest.

It is convenient to begin with Sections 4 and 5 of the Act. Section 4 is interpretive. It provides that the expression ‘the principal Act’ where it is used, means the Wild Birds Protection Act, 1880, as amended by any subsequent enactment ; and defines ‘wild duck’ to mean Eider Duck, Mallard, Pochard, Shelldrake, Shoveler, Smew, Teal, Wigeon and wild duck of any other species whatsoever, except Merganser and Goosander ; and ‘wild goose’ to mean a wild goose of any species whatsoever. Section 5 co-relates the Act with the main body of the wild birds law. The spelling of the names is that used in the Act.

The references in the Duck and Geese Act to the principal (1880) Act with which it is to be construed are necessary for several reasons. The principal Act provides, in Section 3, that the close season for any wild bird (including, of course, duck and geese) shall begin with the second day of March and end on the thirty-first day of July ; makes it unlawful for anyone, after the fifteenth day of March, to expose or offer for sale, or have in his control or possession, any wild bird ‘recently killed or taken’ ; and prescribes an increased penalty for the killing or taking of birds included in a Schedule to the Act. The wild birds included in that Schedule (and wild duck are so included, although geese are not) are protected also against being taken by owners or occupiers of land, on such land, during the close season. Section 8 of the principal Act, as

amended by later Acts, confers power on a Secretary of State by order to extend or vary the close season ; and, in Section 9, power to exempt any county or any part or parts of the county, as to all or any wild birds, from the operation of that Act.

The Duck and Geese Act of 1939, in Section 1, provides an extended (basic) close season for wild duck and geese lasting from 1 February to 11 August, both days inclusive, and extends the 'grace' period of fifteen days to twenty-eight days, i.e., until the twenty-eighth day of February, during which it is not an offence to expose or offer for sale, or have control or possession of, any wild duck or goose recently (and lawfully) killed or taken. To this extent the 1939 Act amends the provisions of the Act of 1880 ; but the power of the Secretary of State to make Orders extending or varying the close season is preserved, although it is modified by the provisions that no Order shall be made whereby the close season shall begin with a date *later* than the first day of February or end with any date *earlier* than the eleventh day of August ; *except* that a county or county borough, which includes in its area parts contiguous to the low-water mark of ordinary tides, may apply to have the commencing date of the close season postponed in those parts to a date not later than the twenty-first day of February.

Section 1 of the 1939 Act also provides that 'no Order shall be made exempting any county or any part or parts thereof from the operation of that Act as respects wild duck or wild geese or any kind thereof.' In other words, no Order shall be made which would leave wild duck and geese without protection in any particular, and geographically defined, area in the county.

Section 2 of the 1939 Act, in Sub-Section (1), adds wild geese to the Schedule of the principal Act, thereby protecting them, as in the case of wild duck, from being killed or taken by anyone, including owners or occupiers of land, on such land during the close season provided for them either by the 1939 Act or by Order, and Sub-Section (2) provides that the Secretary of State may, on application by the council of any county, order that this protection for geese shall not extend to that county or any part or parts thereof. This latter provision, however, does not appear to have been included in any Order so far made for England and Wales, but the following Counties in Scotland have been exempted from the operation of Sub-Section (2) : Aberdeen, Angus, Dumfries, Fife, Inverness, Kincardine, Moray, Perth, Stirling, Wigtown.

It should be noted that the close season prescribed by Order may be different, so however that it does not begin later than the first (or in maritime counties the twenty-first) day of February or end earlier than the eleventh day of August. Thus, wild duck and wild geese may be, and in some places are, protected all the year from being killed or taken by anyone.

Section 3 of the 1939 Act prohibits the importation into the United Kingdom of any dead wild duck or dead wild goose during the statutory close season : i.e., during the period beginning with the first day of February and ending with the eleventh day of August. It provides also that Section 1 of the Act of 1881 (which says that a person shall not be liable to conviction under the principal Act for exposing or offering for sale, or having control or possession of, any wild bird recently killed, if he satisfies the court that the bird was killed in some place to which the Act does not extend) *shall not apply* in respect of any wild duck or wild goose ; but a person shall not be liable to be convicted if he satisfies the court before whom he is charged that the bird was imported *at a time when the importation thereof was not prohibited by this Section ; i.e.,*

he may only import it outside the statutory close season.

The main provisions of the Duck and Geese Act of 1939 are thus :

- (i) To provide a close season from the first day of February until the eleventh day of August, inclusive of both dates ;
- (ii) To give power to a Secretary of State to make an order providing that the close season shall begin on a date not later than the twenty-first day of February on the shore in maritime counties ;
- (iii) to add wild geese to the Schedule of the Act of 1880 for protection during the close season against being killed or taken by owners or occupiers of land on such land ;
- (iv) to prohibit the importation of dead wild duck and geese during the close season ;
- (v) to allow the sale or possession of dead wild duck and geese during the close season, provided the birds were imported outside the close season.

It must, however, be borne in mind that the 1939 Act may be cited together with the Wild Birds Protection Acts, 1880 to 1908, as the Wild Birds Protection Acts, 1880 to 1939. This means that the provisions of other wild bird Acts apply to wild duck and geese, where they are relevant and are not set aside by the 1939 Act.

The "open" season for wild duck and geese lasts from 12 August till 31 January (both dates inclusive) except in the following places in *England and Wales* :

1. *Counties and County Boroughs in whose areas the close season for wild duck and geese commences on a date later than 1 February, or is otherwise varied.*

- (a) Beginning on 21 February and ending 11 August :

Anglesey	Grimsby	Monmouth
Caernarvon	Lancaster	Norfolk
Cardigan	Lincoln	Somerset
Cheshire	(Parts of Holland)	North Riding of Yorkshire
Cumberland	Lincoln	Grimsby
Denbigh	(Parts of Lindsey)	Sunderland
Essex	Merioneth	

- (b) Beginning on 21 February and ending 31 August :

Carmarthen

- (c) Beginning on 15 February and ending 11 August :

Glamorgan
Southampton
Cardiff

- (d) Beginning on 11 February and ending 11 August :

East Suffolk

- (e) Beginning on 1 February and ending on 31 August :

Cornwall
Isle of Ely
Huntingdonshire

2. *County Boroughs in whose areas wild duck and geese are protected all the year.*

Birkenhead	Leicester (City)	St Helens
Blackpool	Newcastle-upon-Tyne	Wallasey
Brighton		

Individual species of wild duck, mainly Eider Duck and Smew, are protected all the year in many counties and county boroughs; and most Authorities have Articles in their Orders prohibiting the killing or taking of wild birds on Sundays.

The variations in *Scotland* are :

Close season from 11 February to 11 August.

Ross and Cromarty—on foreshore of parishes on the eastern seaboard of the county—species *other than* Mallard, Teal and Wigeon.

Close season from 11 February to 31 August.

Ross and Cromarty—on foreshore of certain other parishes on the eastern seaboard of the county—Mallard, Teal and Wigeon *only*.

Close season from 1 February to 31 August.

Ross and Cromarty—the whole county *except* on the foreshore of the parishes on the eastern seaboard—Mallard, Teal and Wigeon *only*.

Perthshire—certain parishes only—certain species of duck only.

All-year protection.

The cities of :

Aberdeen
Dundee

Edinburgh
Glasgow

N.B. The above lists are as comprehensive as has been found practicable, without going into more detail than is possible here; but local Orders may be revised from time to time, and in some counties certain species of duck and geese are afforded special protection. Accordingly, the lists should not be taken as authoritative, and the local Orders should be consulted before any action is taken on the information contained in the lists. The Orders may be consulted at the Council's Offices or, if preferred, they may be purchased from Her Majesty's Stationery Office, or through any bookseller. The price of these Orders is one penny each.

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Large Ear Moth

MOTH COLLECTING AT THE NEW GROUNDS

By Austin Richardson, M.A., F.R.E.S.

AT the Director's invitation I took my generator down to Slimbridge on 10 September 1951 and set up two 120-watt mercury vapour lamps, one on the grass in the Big Pen just inside the main gate and the other in a clearing in the Decoy. We also sugared a line of posts and tree trunks in the lane outside the Rushy Pen. We lit up at about 8.15 p.m. and moths began to appear almost at once. The night was warm and cloudy and a very fair number of species put in an appearance on the sheets beneath the lamps though sugar was only thinly patronized. The most exciting visitor proved to be the first recorded