

2007 No. 349

WILDLIFE

COUNTRYSIDE

**The Conservation (Natural Habitats, &c.) Amendment (No. 2)
(Scotland) Regulations 2007**

Made - - - -

28th June 2007

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

They are satisfied that it is expedient for the reference to Council Directive 92/43/EEC(b) to be construed as a reference to that instrument as amended from time to time.

In accordance with paragraph 2(2) of Schedule 2 to that Act, a draft of the Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Scotland only.

Amendment of the Conservation (Natural Habitats, &c.) Regulations 1994

2.—(1) The Conservation (Natural Habitats, &c.) Regulations 1994(c) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 47(1) (application of provisions of this Part)(d)—

(a) omit “–(a)” where it currently appears;

(b) after “48” insert “, 48A”;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) and the Legislative and Regulatory Reform Act 2006 (c.51), section 27. Paragraph 1A of Schedule 2 was inserted by section 28 the Legislative and Regulatory Reform Act 2006. The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) O.J. No. L 206, 22.7.1992, p.7. Regulation 2 of S.I. 1994/2716 (as amended by S.S.I. 2007/80) defines the Habitats Directive by reference to Council Directive 92/43/EEC as amended from time to time.

(c) S.I. 1994/2716; relevant amendments are made by S.S.I. 2004/475 and 2007/80. The 1994 Regulations make provision for the purpose of implementing, for Great Britain, Council Directive 92/43/EEC.

(d) Regulation 47(1) was amended by S.S.I. 2004/475.

- (c) omit “(b)” where it currently appears;
 - (d) for “&c.), apply,” substitute “&c.) apply–”;
 - (e) immediately before “subject” insert “(a)”; and
 - (f) at the end insert–
 - “; and
 - (b) in relation to all other plans and projects”.
- (3) After regulation 48 insert–

“Directions as regards plans and projects

48A.—(1) The Scottish Ministers may at any time direct a competent authority (other than the Scottish Ministers or the Secretary of State) to send to them a copy of a plan or project–

- (a) which is being prepared by the competent authority, or which is to be or has been undertaken by the competent authority; or
- (b) which is to be or has been consented to, permitted or otherwise authorised by the competent authority,

and which in the opinion of the Scottish Ministers may have a significant effect on a European site in Great Britain.

(2) The Scottish Ministers shall consider any plan or project in respect of which they have issued a direction under paragraph (1), together with such information in relation to it as they may reasonably require the competent authority to provide.

(3) Where the Scottish Ministers are satisfied that–

- (a) the plan or project falls within regulation 48(1) and no appropriate assessment has been carried out; or
- (b) an appropriate assessment has been carried out which does not comply with the Habitats Directive and these Regulations,

they may direct the competent authority to carry out an appropriate assessment in accordance with the Habitats Directive and these Regulations.

(4) A direction under paragraph (3) shall be issued as soon as reasonably practicable, and may, in particular, specify–

- (a) the manner in which an appropriate assessment must be carried out; and
- (b) the matters to be covered by the appropriate assessment.

(5) Where a direction is issued under paragraph (3), the plan or project and any operation or activity carried out under it is suspended until such time as the Scottish Ministers direct that they are satisfied that an appropriate assessment has been carried out in accordance with the Habitats Directive and these Regulations.

(6) The Scottish Ministers shall issue a direction under paragraph (5) as soon as reasonably practicable after they are satisfied that an appropriate assessment has been carried out in accordance with the Habitats Directive and these Regulations.

(7) The Scottish Ministers shall consult with the appropriate nature conservation body as to the exercise of the Scottish Ministers’ functions under paragraphs (1) to (6) of this regulation.

(8) Where a direction is issued under paragraph (3), the Scottish Ministers shall send to the competent authority a summary in writing of their reasons.

(9) A competent authority shall comply with any direction given to it under paragraph (1) or (3).”.

(4) In regulation 49 (considerations of overriding public interest)(a)–

(a) in paragraph (1) after “agree” insert “, subject to paragraph (1A),”;

(b) immediately after paragraph (1) insert–

“(1A) A competent authority other than the Scottish Ministers or the Secretary of State shall consult the Scottish Ministers for the purpose of satisfying itself under paragraph (1), and shall have regard to the opinion of the Scottish Ministers.”; and

(c) after paragraph (6) insert–

“(7) A competent authority shall comply with any direction given to it under paragraph (6).”.

(5) In regulation 50(2) (review of existing decisions and consents, etc.) after “(4)” insert “and regulation 48A”.

(6) At the beginning of regulation 52(2) (co-ordination where more than one competent authority involved) insert “Subject to regulation 48A,”.

St Andrew’s House,
Edinburgh
28th June 2007

RICHARD LOCHHEAD
A member of the Scottish Executive

(a) Regulation 49 was amended by S.S.I. 2007/80.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, make further provision for the transposition of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) (O.J. No. L 206, 22.7.1992, p.7).

Regulation 2 amends the Conservation (Natural Habitats, &c.) Regulations 1994.

Paragraph (2) amends regulation 47 and provides that regulations 48 to 53, and new regulation 48A inserted by paragraph (3), apply to all plans and projects not currently subject to those provisions.

Paragraph (3) inserts new regulation 48A which empowers the Scottish Ministers to—

- (a) direct that a competent authority (other than the Scottish Ministers or the Secretary of State) send them a copy of a plan or project which may have a significant effect on a European site;
- (b) consider whether—
 - (i) such a plan or project requires to be subject to appropriate assessment in terms of Article 6.3 of the Habitats Directive, and if so to direct that such an assessment is carried out, or
 - (ii) any assessment which has been carried out is insufficient to comply with that Article and if so to direct that further assessment be carried out;
- (c) direct, in particular, the manner in which an assessment should be carried out or the matters it should cover in order to secure compliance with the Habitats Directive; and
- (d) issue a direction when an appropriate assessment has been conducted in accordance with the Habitats Directive to their satisfaction.

A plan or project under consideration is suspended from the time that the Scottish Ministers issue a direction under (b) until they issue a further direction under (d).

Paragraph (4) amends regulation 49 and provides that a competent authority (other than the Scottish Ministers or the Secretary of State) requires to consult with, and have regard to the opinion of, the Scottish Ministers in satisfying itself that there are no alternative solutions and on matters of imperative overriding public interest, in the case of a negative assessment. It also provides that competent authorities must comply with a direction issued under regulation 49(6).

Paragraph (5) amends regulation 50 to apply new regulation 48A to appropriate assessments conducted under regulation 50(2). Paragraph (6) makes a consequential amendment to regulation 52(2).

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