

2011 No. 155

WILDLIFE

COUNTRYSIDE

**The Conservation (Natural Habitats, &c.) Amendment
(Scotland) Regulations 2011**

Made - - - - 22nd February 2011

Laid before the Scottish Parliament 24th February 2011

Coming into force - - 6th April 2011

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 section 26A of the Wildlife and Countryside Act 1981(b), and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act of 1972, and it appears to the Scottish Ministers that it is expedient for references to EU instruments, or provisions of those instruments, in these Regulations to be construed as references to those instruments or provisions as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2011 and come into force on 6th April 2011.

(2) These Regulations extend to Scotland only.

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

2. The Conservation (Natural Habitats, &c.) Regulations 1994(c) are amended in accordance with regulations 3 to 6.

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- (a) 1972 c.68. Section 2(2) of the European Communities Act 1972 (the “1972 Act”) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46) (the “1998 Act”), section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) (the “2006 Act”), and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7) (the “2008 Act”). Paragraph 1A of Schedule 2 to the 1972 Act was inserted by section 28 of the 2006 Act, and amended by Part 1 of Schedule 1 to the 2008 Act. The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (b) 1981 c.69. Section 26A of the Wildlife and Countryside Act 1981 was inserted by paragraph 22 of schedule 6 to the Nature Conservation (Scotland) Act 2004 (asp 6), and amended by section 44(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6). This power is exercised to the extent that S.I. 1994/2716 as amended by this instrument provides for an offence punishable on summary conviction with imprisonment for a term not exceeding six months, despite the restriction in paragraph 1(1)(d) of Schedule 2 to the 1972 Act.
- (c) S.I. 1994/2716; relevant amendments are made by S.I. 2007/1843 and 2009/1307 and 2438, and by S.S.I. 2004/475, 2007/80, 349, 485, 517 and 570, 2008/17, 425 and 427, and 2009/222 and 343.

Interpretation

3. In regulation 2 (interpretation)(a)—

- (a) in paragraph (1), for the definition of “the Wild Birds Directive” substitute—

“the Wild Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(b), as amended from time to time;”, and
- (b) after paragraph (2), insert—

“(2ZA) Unless the context otherwise requires, expressions used in the Wild Birds Directive and in these Regulations have the same meaning as in that Directive.”.

Special protection areas

4. After regulation 9 (consultation as to inclusion of site omitted from the list)(c) insert—

“Special protection area: classification of sites

9A.—(1) The Scottish Ministers must classify as special protection areas such sites (including sites in the Scottish inshore region) as they consider necessary to ensure that the objective specified in paragraph (2) is attained.

(2) The objective referred to in paragraph (1) is that those sites across the United Kingdom’s territory which are most suitable in number and size for—

- (a) the conservation of species listed in Annex 1 to the Wild Birds Directive which naturally occur in that territory, and
- (b) the conservation of naturally occurring migratory species of birds not listed in Annex 1 which naturally occur in that territory,

are classified as special protection areas, in so far as they consist of sites in Scotland.

(3) The Scottish Ministers must make their decision as to the sites to be classified under paragraph (1) only on the basis of relevant scientific information and—

- (a) in the case of a site to be classified for the purpose mentioned in paragraph 2(a), on the basis of criteria set out in Article 4(1) of the Wild Birds Directive, and
- (b) in the case of a site to be classified for the purpose mentioned in paragraph 2(b), on the basis of criteria set out in Article 4(2) of that Directive.

(4) In this regulation—

- (a) a reference to a provision of the Wild Birds Directive is to be construed as a reference to that provision as amended from time to time, and
- (b) “Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland.

Special protection area: notification of proposal

9B.—(1) The Scottish Ministers must if they propose to classify a site as a special protection area give to the appropriate nature conservation body(d)—

- (a) notice of that proposal, and
- (b) an accompanying statement of the reasons for that proposal.

(a) Regulation 2 was relevantly amended by S.I. 2007/1843 and S.S.I. 2004/475 and 2007/80 and 570.

(b) O.J. No. L 20, 26.1.2010, p.7. This instrument codifies, with minor amendments, Council Directive 1979/409/EEC as amended.

(c) Regulation 9 was substituted by S.I. 2007/1843.

(d) Regulation 4(1) of S.I. 1994/2716 provides that in relation to Scotland “the appropriate nature conservation body” means Scottish Natural Heritage. Regulation 4(1) was inserted by S.I. 2007/1843.

(2) The appropriate nature conservation body must on being given notice of a proposal, provide a copy of the proposal and the accompanying statement—

- (a) to such persons as the Scottish Ministers may direct, and
- (b) where, in their opinion, it is appropriate to do so to—
 - (i) any other person (including owners or occupiers of land or premises), and
 - (ii) every competent authority which exercises functions in relation to the site, or in relation to an area adjacent to the site.

(3) The appropriate nature conservation body must when they provide a copy of a proposal and accompanying document to any such person or authority specify the period of not less than 12 weeks (the “consultation period”) during which representations may be made to them with respect to the proposal by that person or authority.

(4) The appropriate nature conservation body must as soon as reasonably practicable after expiry of the consultation period provide to the Scottish Ministers a report (the “consultation report”)—

- (a) describing any representations made in that period, or
- (b) stating that no representations have been made.

(5) The Scottish Ministers must consider the consultation report when determining whether to classify a site as a special protection area.

(6) The Scottish Ministers may—

- (a) give guidance to the appropriate nature conservation body for the purpose of the exercise by them of functions under this regulation, and
- (b) vary or revoke a direction under paragraph (2)(a).

(7) The appropriate nature conservation body must have regard to any guidance under paragraph (6)(a) in discharging a function referred to in that paragraph.

Special protection area: hearing and representations in respect of a proposal

9C.—(1) The Scottish Ministers may give any person the opportunity of—

- (a) making written representations to, or
- (b) being heard by,

a person appointed by them for the purpose of deciding whether to classify a site as a special protection area.

(2) Any person being heard by the appointed person may—

- (a) be represented by another person,
- (b) call persons to give evidence,
- (c) make written representations before or at the hearing,
- (d) put questions to any person who gives evidence at the hearing, including any person who gives expert evidence.

(3) The Scottish Ministers must have regard to the report of an appointed person when deciding whether to so classify a site.”.

Modification of the Nature Conservation (Scotland) Act 2004

5. In regulation 20 (Chapter 2 of Part 2 of the 2004 Act)(a), paragraph (a), for sub-paragraph (i) substitute—

“(i) in subsection 2(a) for “special interest,” there were substituted—

“significance in relation to the objectives of—

- (i) Council Directive 92/34/EEC on the conservation of natural habitats and of wild fauna and flora(b), as amended from time to time, and
- (ii) Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds, as amended from time to time.””.

Delegation by the Scottish Ministers of licensing functions

6. After regulation 44 (grant of licences for certain purposes)(c) insert—

“Delegation of licence granting power: Scotland

44A.—(1) The Scottish Ministers may delegate their functions in relation to licences under regulation 44 to the appropriate nature conservation body.

(2) A delegation may be, to any degree, general or specific and may in particular relate to—

- (a) a particular type of animal or plant,
- (b) a particular licence or type of licence, or
- (c) a particular area.

(3) Unless it specifies otherwise, a delegation relating to a particular licence (or type of licence) includes the power to modify or revoke the licence (or licences of that type) where granted before the delegation.

(4) A delegation is to be made by written direction.

(5) The Scottish Ministers may modify or revoke a direction under paragraph (4).

(6) The requirement on the Scottish Ministers under regulation 44(5) to take advice from the appropriate nature conservation body does not apply in the period when a direction under paragraph (4) has effect, in respect of any licence granted under the direction.

(7) Where a direction is revoked, any existing licence granted under the direction continues to have effect (unless the revoking direction provides otherwise).”.

R CUNNINGHAM

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
22nd February 2011

(a) Regulation 20 was substituted by S.S.I. 2004/475.

(b) O.J. No. L 206, 22.7.1992, p.7, as last amended by Council Directive 2006/105/EC (O.J. No. L 363, 20.12.2006, p.368).

(c) Regulation 44 was relevantly amended by S.I. 2007/1843, and by S.S.I. 2004/475 and 2007/80.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, amend the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716) (“the 1994 Regulations”).

They make provision for the transposition of Council Directive 92/34/EEC on the conservation of natural habitats and of wild fauna and flora (O.J. No. L 206, 22.7.1992, p.7) (the “Habitats Directive”), and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (O.J. No. L 20, 26.1.2010, p.7) (the “new Wild Birds Directive”).

Regulation 3 provides for the meaning of terms used both in the 1994 Regulations and the new Wild Birds Directive, and replaces the definition of Council Directive 79/409/EEC on the conservation of wild birds (O.J. No. L 103, 25.4.1979, p.1) (the “old Wild Birds Directive”) with a definition of the new Wild Birds Directive. It provides for the reference to the new Wild Birds Directive to be construed as a reference to that instrument as amended from time to time.

Regulation 4 inserts new regulations 9A to 9C into the 1994 Regulations, as follows:—

- (a) Regulation 9A of the 1994 Regulations has the effect that the Scottish Ministers must classify as a special protection area all sites up to territorial sea limit adjacent to Scotland that require to be classified pursuant to Articles 4(1) and 4(2) of the new Wild Birds Directive,
- (b) Regulation 9B of the 1994 Regulations provides for notification of a proposed special protection area to the appropriate nature conservation body (Scottish Natural Heritage), and for onward notification of the proposal by that body, and
- (c) Regulation 9C of the 1994 Regulations enables the Scottish Ministers to appoint a person to hear, or consider written representations from, any person for the purpose of deciding whether or not to classify a special protection area.

The Scottish Ministers are also subject to a duty to classify special protection areas in the Scottish offshore region as provided for by the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842).

Regulation 5 provides for references to the Habitats Directive and old Wild Birds Directive in regulation 20 of the 1994 Regulations to be substituted for references to the Habitats Directive and the new Wild Birds Directive as they are amended from time to time. Regulation 20 modifies the application of Chapter 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of special nature conservation orders as provided for by the 1994 Regulations.

Regulation 6 inserts a new regulation 44A into the 1994 Regulations. It has the effect that Ministers are able to delegate the exercise of their functions under regulation 44(2)(e) to (g) and (2A) of the 1994 Regulations to the appropriate nature conservation body.

A business and regulatory impact assessment has not been prepared for these Regulations.

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