
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 155

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

Special protection areas

4. After regulation 9 (consultation as to inclusion of site omitted from the list)(1) 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(2)—

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

(1) Regulation 9 was substituted by [S.I. 2007/1843](#).

(2) 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.”.