
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 228

**The Conservation (Natural Habitats, &c.)
Amendment (Scotland) Regulations 2012**

New regulations 3, 3A and 3B

4. For regulation 3 (implementation of Directive)(1) substitute—

“Duties relating to compliance with the Directives

3.—(1) The Scottish Ministers, the appropriate nature conservation body(2) and, in relation to the Scottish marine area, a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.

- (2) Paragraph (1) applies in particular to functions under the following enactments:—

the Dockyard Ports Regulation Act 1865(3);

the Hill Farming Act 1946(4);

Part III of the National Parks and Access to the Countryside Act 1949(5);

the Land Drainage (Scotland) Act 1958(6);

the Harbours Act 1964(7);

the Forestry Act 1967(8);

section 49A of the Countryside (Scotland) Act 1967(9) (management agreements);

section 15 of the Countryside Act 1968(10) (areas of special scientific interest);

Part II of the Control of Pollution Act 1974(11) (pollution of water);

Part I and section 35 of the Wildlife and Countryside Act 1981(12);

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- (1) Regulation 3 was relevantly amended by [S.I. 1997/3055](#) and [2010/490](#), by [S.S.I. 2004/475](#) and [2007/80](#), and by paragraph 15 of schedule 2 to the 2003 Act.
- (2) Regulation 4(1) of [S.I. 1994/2716](#) provides that in relation to Scotland “the appropriate nature conservation body” means Scottish Natural Heritage.
- (3) [1865 c.125](#).
- (4) [1946 c.73](#).
- (5) [1949 c.97](#).
- (6) [1958 c.24](#).
- (7) [1964 c.40](#).
- (8) [1967 c.10](#).
- (9) [1967 c.86](#). Section 49A was inserted by section 9 of the Countryside (Scotland) Act [1981 \(c.44\)](#), and amended by section 14(3) of and paragraph 4(3) of Schedule 10 to the Natural Heritage (Scotland) Act (c.28) (“the 1991 Act”), and by paragraph 28(6) of schedule 12 to the Abolition of Feudal Tenure etc. (Scotland) Act [2000 \(asp 5\)](#) (“the 2000 Act”).
- (10) [1968 c.41](#). Section 15 was amended by section 72(8) of and Part 1 of Schedule 17 to the Wildlife and Countryside Act [1981 \(c.69\)](#), by paragraph 4(2) of Schedule 9 and Part 6 of Schedule 16 to the Environmental Protection Act [1990 \(c.43\)](#), by paragraph 29(2) of schedule 12 to the 2000 Act, and by paragraph 48 of Schedule 11 and Schedule 12 to the Natural Environment and Rural Communities Act [2006 \(c.16\)](#) (“the 2006 Act”).
- (11) [1974 c.40](#).
- (12) [1981 c.69](#). Section 35 was amended by paragraph 85 of Schedule 11 to the 2006 Act.

sections 120 to 122 of the Civic Government (Scotland) Act 1982 (control of the seashore, adjacent waters and inland waters)(**13**);
sections 2, 3, 5, 7 and 11 of the Natural Heritage (Scotland) Act 1991(**14**);
the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992(**15**) (conservation in the exercise of sea fisheries functions);
the Environment Act 1995(**16**);
the Deer (Scotland) Act 1996(**17**);
the Town and Country Planning (Scotland) Act 1997(**18**);
the National Parks (Scotland) Act 2000(**19**);
Part 1 of the Land Reform (Scotland) Act 2003(**20**) (access rights);
Part 1 of the Water Environment and Water Services (Scotland) Act 2003(**21**) (protection of the water environment);
Part 2 of the Nature Conservation (Scotland) Act 2004(**22**) (conservation and enhancement of natural features);
the Natural Environment and Rural Communities Act 2006(**23**);
the Flood Risk Management (Scotland) Act 2009(**24**);
the Marine (Scotland) Act 2010(**25**);
the Water Environment (Controlled Activities) (Scotland) Regulations 2011(**26**); and
these Regulations.

(3) Without prejudice to the preceding provisions, a competent authority, in exercising their functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.

Duties in relation to wild bird habitat

3A.—(1) Without prejudice to regulation 3(1), the Scottish Ministers, the appropriate nature conservation body and, in relation to the Scottish marine area, a competent authority must take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers.

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- (13) 1982 c.45. Section 120 was amended by paragraph 129(17) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39) (“the 1994 Act”) and by paragraph 8(a) of schedule 2 to the 2003 Act. Section 121 was amended by section 289G of the Criminal Procedure (Scotland) Act 1975 (c.21) (“the 1975 Act”), by section 141 of, and paragraph 129(18) of Schedule 13 and Schedule 14 to, the 1994 Act, and by paragraph 8 of schedule 2 to the 2003 Act. Section 122 was amended by paragraph 129(19) of Schedule 13 and Schedule 14 to the 1994 Act.
- (14) 1991 c.28. Section 2 was amended by paragraph 48 of Schedule 2 to the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11) (“the 1997 Act”), by S.I. 2009/1941, and by paragraph 3 of schedule 1 to the Public Services Reform (Scotland) Act 2010 (asp 8) (“the 2010 Act”). Section 3 was amended by paragraph 4 of schedule 1 to the 2010 Act. Section 7 was amended by paragraph 1 of Schedule 6 to the Gas Act 1995 (c.45) and by S.I. 1999/1820.
- (15) 1992 c.36. Section 1 was amended by S.I. 1999/1820 and by section 11 and Part 4 of Schedule 22 to the Marine and Coastal Access Act 2009 (c.23).
- (16) 1995 c.25.
- (17) 1996 c.58.
- (18) 1997 c.8.
- (19) 2000 asp 10.
- (20) 2003 asp 2.
- (21) 2003 asp 3.
- (22) 2004 asp 6.
- (23) 2006 c.16.
- (24) 2009 asp 6.
- (25) 2010 asp 5.
- (26) S.S.I. 2011/209.

(2) Except in relation to the Scottish marine area, the Scottish Environment Protection Agency, the Forestry Commissioners⁽²⁷⁾, local authorities and National Park authorities⁽²⁸⁾ must take such steps in the exercise of their functions as they consider appropriate to contribute to the achievement of the objective in paragraph (3).

(3) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in Scotland in implementation of Article 3 of the Wild Birds Directive (including by means of the upkeep, management and creation of such habitat, as appropriate), having regard to the requirements of Article 2 of that Directive.

(4) Paragraphs (1) and (2) apply in particular to functions under the following enactments:—

- sections 23 and 25 of the Hill Farming Act 1946⁽²⁹⁾;
- sections 16 to 18, 20 and 21 of the National Parks and Access to the Countryside Act 1949⁽³⁰⁾ (agreements for management of nature reserves, powers of compulsory acquisition of land for nature reserves, and powers to make byelaws for the protection of nature reserves);
- section 49A of the Countryside (Scotland) Act 1967 (management agreements);
- sections 3, 7, 8A, 9, 10, 17A, 39, 40 and 46 of the Forestry Act 1967⁽³¹⁾;
- section 15 of the Countryside Act 1968 (areas of special scientific interest);
- sections 14D to 14P of the Wildlife and Countryside Act 1981⁽³²⁾ (species control orders);
- sections 7, 8 and 10 of the Deer (Scotland) Act 1996⁽³³⁾;
- section 1 of the National Parks (Scotland) Act 2000;
- section 22 of the Water Environment and Water Services (Scotland) Act 2003;
- Part 2 of the Nature Conservation (Scotland) Act 2004 (conservation and enhancement of natural features);
- the Marine (Scotland) Act 2010;
- the Water Environment (Controlled Activities) (Scotland) Regulations 2011; and

⁽²⁷⁾ See section 1(1) of the Forestry Act 1967.

⁽²⁸⁾ National Park authorities are established by order under section 7(1)(b) of the [National Parks \(Scotland\) Act 2000](#) ([asp 10](#)). The Loch Lomond and The Trossachs National Park Authority and the Cairngorms National Park Authority were established by [S.S.I. 2002/201](#) and [S.S.I. 2003/1](#) respectively.

⁽²⁹⁾ Section 23 was substituted by section 34(2) of the [Wildlife and Natural Environment \(Scotland\) Act 2011](#) ([asp 6](#)) (“the 2011 Act”). Section 25 was amended by section 34(6) of the 2011 Act.

⁽³⁰⁾ Section 16 was amended by paragraph 1(3) of Schedule 2 to the 1991 Act and by paragraph 14 of Schedule 11 to the 2006 Act. Section 17 was amended by paragraphs 15 and 16 of Schedule 11 to the 2006 Act. Section 18 was amended by Schedule 4 to the Arbitration Act 1996 ([c.23](#)) and by paragraphs 15 and 17 of Schedule 11 to the 2006 Act. Section 20 was amended by paragraph 28 of Schedule 4 to the Telecommunications Act 1984 ([c.12](#)), paragraph 20 of Schedule 17 to the Communications Act 2003 ([c.21](#)), and by paragraph 15 of Schedule 11 to the 2006 Act. Section 21 was amended by Schedules 27 and 29 to the Local Government (Scotland) Act 1973 ([c.65](#)), section 10 of the Local Government and Planning (Scotland) Act 1982 ([c.43](#)), by Schedule 14 to the 1994 Act, and by paragraphs 15 and 19 of Schedule 11 to the 2006 Act.

⁽³¹⁾ Section 3 was amended by [S.I. 1999/1747](#). Section 7 was amended by section 289G of the 1975 Act. Section 8A was inserted by section 4 of the Forestry Act 1981 ([c.39](#)) (“the 1981 Act”) and amended by [S.I. 1999/1756](#). Section 9 was amended by section 2(1) of and Schedule 1 to, and section 3(2) of and Schedule 2 to, the Forestry Act 1979 ([c.21](#)), by [S.I. 1985/1958](#), by section 112 and Schedule 16 to the Electricity Act 1989 ([c.29](#)), and by paragraph 13 of Schedule 2 to the 1997 Act. Section 10 was amended by [S.I. 1999/1747](#), and by paragraph 2(2) of schedule 7 to the Nature Conservation (Scotland) Act 2004 ([asp 6](#)). Section 17A was inserted by section 1(a) of the Forestry Act 1986 ([c.30](#)), and amended by [S.I. 2006/780](#) and by [S.I. 1999/1747](#). Section 39 was amended by section 1 of the 1981 Act, by Schedule 5 to the Requirements of Writing (Scotland) Act 1995 ([c.7](#)) and by [S.I. 1999/1747](#). Section 40 was amended by paragraph 69 of Schedule 13 to the 1994 Act, by [S.I. 1999/1747](#), by [S.I. 2001/1149](#), and by paragraph 86 of Schedule 12(3) to the Postal Services Act 2011 ([c.5](#)). Section 46 was amended by section 10(1) of the Decimal Currency Act 1969 ([c.19](#)), by Schedule 7D to the 1975 Act, and by [S.I. 1999/1747](#).

⁽³²⁾ Sections 14D to 14P were inserted by section 16 of the 2011 Act.

⁽³³⁾ Section 7 was amended by paragraphs 6 and 13 of schedule 1 to the 2010 Act, and by section 28(2) of the 2011 Act. Section 8 was amended by paragraphs 6 and 14 of schedule 1 to the 2010 Act, and by section 28(3) of the 2011 Act. Section 10 was amended by [S.S.I. 2006/367](#), by paragraphs 6 and 16 of schedule 1 to the 2010 Act, and by section 28(4) of the 2011 Act.

any function exercisable in relation to town and country planning⁽³⁴⁾.

(5) In section 79(3)(a) of the Marine (Scotland) Act 2010 (creation of network of conservation sites), the reference to “the conservation or improvement of the marine environment” includes the objective in paragraph (3), and accordingly the duty in section 103 (reports to Parliament) of that Act applies in relation to that objective.

(6) In considering which measures may be appropriate for the purpose of securing or contributing to the objective in paragraph (3), regard may be had to economic and recreational requirements.

(7) The Scottish Ministers must take any measures they consider necessary to facilitate or co-ordinate arrangements to secure the taking of steps under paragraphs (1) and (2) by the persons mentioned in those paragraphs.

(8) So far as lies within its powers, a competent authority must use all reasonable endeavours to avoid pollution or deterioration of habitats of wild birds in Scotland.

Review and guidance

3B.—(1) The appropriate nature conservation body must from time to time—

- (a) review the extent to which the objective in regulation 3A(3) has been met, other than in relation to the Scottish marine area;
- (b) set out the conclusions of the review in a report, including any recommendations for further action; and
- (c) send the report to the Scottish Ministers.

(2) In carrying out the review, the appropriate nature conservation body must, so far as is reasonable, take account of any measures taken which contribute to the achievement of that objective, whether or not taken pursuant to a requirement imposed by any enactment.

(3) After consultation with the appropriate nature conservation body, the Scottish Ministers must give guidance to the Scottish Environment Protection Agency, the Forestry Commissioners, local authorities and National Park authorities—

- (a) to facilitate the determination by those bodies of the extent to which the diversity and area of wild bird habitat is sufficient; and
- (b) on the steps that it may be appropriate to take pursuant to regulation 3A(1) or (2).

(4) In exercising a function to which regulation 3A(1) or (2) applies, a body to which guidance has been given under paragraph (3) of this regulation must have regard to that guidance.”.

⁽³⁴⁾ National Park authorities have functions exercisable in relation to town and country planning as regards National Parks by virtue of article 7 of [S.S.I. 2002/201](#) and article 7 of [S.S.I. 2003/1](#).