

2016 No. 38

NATURE CONSERVATION

The Nature Conservation (Scotland) Act 2004 (Authorised Operations) Order 2016

Made - - - - - *21st January 2016*

Laid before the Scottish Parliament *25th January 2016*

Coming into force - - - *3rd March 2016*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 14(1)(f) and 17(1)(f) of the Nature Conservation (Scotland) Act 2004(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Nature Conservation (Scotland) Act 2004 (Authorised Operations) Order 2016 and comes into force on 3rd March 2016.

Authorised operations

2.—(1) The types of operation described in paragraph (2) are types of operation described for the purposes of sections 14(1)(f) (operations by public bodies etc.: authorised operations) and 17(1)(f) (operations by owners or occupiers of sites of special scientific interest: authorised operations) of the Nature Conservation (Scotland) Act 2004.

(2) The types of operation are—

- (a) an operation of a type described in the Schedule if it is to be carried out pursuant to an undertaking given to the Scottish Ministers under—
 - (i) regulation 9 (undertakings) of the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008(b);
 - (ii) regulation 10 (undertakings) of the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008(c); or
 - (iii) regulation 5(1) (undertakings and transfer of holdings) of the Rural Development (Scotland) Regulations 2015(d);
- (b) muirburn if it is to be carried out in accordance with a licence granted under section 23C of the Hill Farming Act 1946(e); and

(a) 2004 asp 6; sections 14(1)(f) and 17(1)(f) were inserted by section 39 of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6) (“the 2011 Act”).

(b) S.S.I. 2008/100; relevant amending instruments are S.S.I. 2009/335, S.S.I. 2009/411, and S.S.I. 2011/106. S.S.I. 2008/100 was revoked by S.S.I. 2015/192, but continues to apply in relation to any undertaking given under it.

(c) S.S.I. 2008/159; relevant amending instruments are S.S.I. 2009/155 and S.S.I. 2011/85. S.S.I. 2008/159 was revoked by S.S.I. 2015/192, but continues to apply in relation to any undertaking given under it.

(d) S.S.I. 2015/192.

(e) 1946 c.73; section 23C was inserted by section 34 of the 2011 Act.

- (c) an operation for the control or eradication of an invasive animal or invasive plant if it is to be carried out in accordance with a species control order made under section 14D of the Wildlife and Countryside Act 1981^(a).

Revocation

3. The Nature Conservation (Scotland) Act 2004 (Authorised Operations) Order 2011^(b) is revoked.

AILEEN McLEOD

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
21st January 2016

(a) 1981 c.69. Section 14D was inserted by section 16 of the 2011 Act. "Invasive animal" and "invasive plant" are defined in section 14P (which was also inserted by section 16 of the 2011 Act).

(b) S.S.I. 2011/419.

SCHEDULE

Article 2(2)(a)

Descriptions of types of operation for the purposes of article 2(2)(a)

1. Cultivation of land, including ploughing, rotavating, harrowing and re-seeding.
2. Grazing of livestock and changes to grazing management.
3. Feeding of livestock and changes to livestock feeding practices.
4. Mowing or other methods of cutting vegetation, including changes in a mowing or cutting regime.
5. Application of manure, other fertilisers (including seaweed) or lime.
6. Application of pesticides, including herbicides.
7. Burning vegetation.
8. Introduction or release of any animal or plant.
9. Killing or removal of any wild animal.
10. Destruction, displacement, removal or cutting of any plant or plant remains.
11. Tree or woodland management, and changes to tree or woodland management.
12. Modification of the structure of water courses.
13. Water utilisation (including irrigation, storage and abstraction from existing water bodies and through boreholes).
14. Infilling of ditches, drains, ponds, pools or marshes.
15. Reclamation of land from sea, estuary or marsh.
16. Construction, removal or destruction of roads, tracks, paths, walls, fences, hardstands, banks, ditches or other earthworks.
17. The following operations where they are carried out in connection with any of the operations listed in paragraph 16:—
 - (a) modification of natural or man-made features;
 - (b) clearance of boulders, large stones, loose rock or scree;
 - (c) battering, buttressing or grading of rock faces; or
 - (d) cutting or infilling of pits or quarries.
18. Erection of permanent or temporary structures.
19. Engineering works, including drilling.
20. Use of vehicles, including aircraft or any ship, boat or other water-going vessel.

In this Schedule—

- (a) “animal” includes any mammal, reptile, amphibian, bird, fish or invertebrate, and a reference to an animal includes a reference to any egg, larva, pupa or other immature stage of an animal;
- (b) “plant” includes any flowering plant, fern, alga, fungus, lichen or moss, and a reference to a plant includes a reference to bulbs, corms, seeds and spores of the plant; and

- (c) “woodland management” includes afforestation, planting, clear and selective felling, thinning, coppicing, modification of the stand or underwood and changes in species composition.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order describes types of operation for the purposes of sections 14(1)(f) and 17(1)(f) of the Nature Conservation (Scotland) Act 2004 (article 2). As a consequence of being so described, these operations do not require the consent of Scottish Natural Heritage under section 13 (operations by public bodies etc.) or 16 (operations by owners or occupiers of sites of special scientific interest) of that Act.

The Order also revokes the Nature Conservation (Scotland) Act 2004 (Authorised Operations) Order 2011, which it replaces (article 3).

No business and regulatory impact assessment has been prepared for this Order as no impact upon business, charities or voluntary bodies is foreseen.

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