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STATUTORY INSTRUMENTS

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**1995 No. 2825**

**WILDLIFE**

**The Wildlife and Countryside Act  
1981 (Amendment) Regulations 1995**

*Made* - - - - - *31st October 1995*  
*Laid before Parliament* *9th November 1995*  
*Coming into force* - - - *30th November 1995*

The Secretary of State for the Environment, as respects England, the Secretary of State for Wales, as respects Wales, and the Secretary of State for Scotland, as respects Scotland, being designated<sup>(1)</sup> Ministers for the purposes of section 2(2) of The European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the conservation of natural habitats and of wild fauna and flora, in exercise of the powers conferred on them by the said section 2 and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Wildlife and Countryside Act 1981 (Amendment) Regulations 1995 and shall come into force on 30th November 1995.

(2) In these Regulations, “the Act” means the Wildlife and Countryside Act 1981<sup>(3)</sup>.

**Amendments of section 4**

2.—(1) In subsection (3) of section 4 of the Act (exceptions to sections 1 and 3), in paragraph (c), for the words “or fisheries” there shall be substituted the words “, fisheries or inland waters”.

(2) After that subsection there shall be inserted the following subsections—

“(4) An authorised person shall not be regarded as showing that any action of his was necessary for a purpose mentioned in subsection (3)(c) unless he shows that as regards that purpose, there was no other satisfactory solution.

(5) An authorised person shall not be entitled to rely on the defence provided by subsection (3)(c) as respects any action taken at any time for any purpose mentioned in that

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(1) S.I.1992/2870.  
(2) 1972 c. 68.  
(3) 1981 c. 69.

paragraph if it had become apparent, before that time, that that action would prove necessary for that purpose and either—

- (a) a licence under section 16 authorising that action had not been applied for by him as soon as reasonably practicable after that fact had become apparent; or
- (b) an application by him for such a licence had been determined.

(6) An authorised person shall not be entitled to rely on the defence provided by subsection (3)(c) as respects any action taken at any time unless he notified the agriculture Minister as soon as reasonably practicable after that time that he had taken the action.”

### **Amendments of section 16**

3.—(1) Section 16 of the Act (power to grant licences) shall be amended as follows.

(2) In subsection (1)—

(a) for paragraph (a) there shall be substituted the following paragraph—

“(a) for scientific, research or educational purposes;”;

(b) after paragraph (c) there shall be inserted the following paragraphs—

“(ca) for the purposes of the re-population of an area with, or the re-introduction into an area of, wild birds, including any breeding necessary for those purposes;

(cb) for the purpose of conserving flora or fauna;”;

(c) in paragraph (k), for the words “or fisheries” there shall be substituted the words “, fisheries or inland waters”.

(3) After that subsection there shall be inserted the following subsection—

“(1A) The appropriate authority—

(a) shall not grant a licence for any purpose mentioned in subsection (1) unless it is satisfied that, as regards that purpose, there is no other satisfactory solution; and

(b) shall not grant a licence for any purpose mentioned in paragraphs (e) to (h) of that subsection otherwise than on a selective basis and in respect of a small number of birds.”

(4) In subsection (5), for the words “subsection (6)” there shall be substituted the words “subsections (5A) and (6)”.

(5) After that subsection there shall be inserted the following subsection—

“(5A) A licence under subsection (1) which authorises any action in respect of wild birds—

(a) shall specify the species of wild birds in respect of which, the circumstances in which, and the conditions subject to which, the action may be taken;

(b) shall specify the methods, means or arrangements which are authorised or required for the taking of the action; and

(c) subject to subsection (5)(d), shall be valid for the period, not exceeding two years, stated in the licence.”

(6) In subsection (6), for the words “(1), (2) or (3)” there shall be substituted the words “(2) or (3)”.

(7) In subsection (9), in paragraph (a), for the words “paragraph (a), (b), or (c)” there shall be substituted the words “any of paragraphs (a) to (cb)”.

(8) After that subsection there shall be inserted the following subsection—

“(9A) In this section “re-population” and “re-introduction”, in relation to wild birds, have the same meaning as in the Directive of the Council of the European Communities dated 2nd April 1979 (No.79/409/EEC) on the conservation of wild birds.”

#### **Consequential amendment of section 27**

4. In subsection (1) of section 27 of the Act (interpretation of Part I), after the definition of “game bird” there shall be inserted the following definition—

““inland waters” means—

- (a) inland waters within the meaning of the Water Resources Act 1991;(4)
- (b) any waters not falling within paragraph (a) above which are within the seaward limits of the territorial sea;
- (c) controlled waters within the meaning of Part II of the Control of Pollution Act 1974(5) other than ground waters as defined in section 30A(1)(d) of that Act.”

25th October 1995

*John Selwyn Gummer*  
Secretary of State for the Environment

30th October 1995

*Michael Forsyth*  
Secretary of State for Scotland

31st October 1995

*William Hague*  
Secretary of State for Wales

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(4) 1991 c. 57.  
(5) 1974 c. 40.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Part I of the Wildlife and Countryside Act 1981 (“the Act”) contains provisions for, amongst other matters, implementing Council Directive 79/409 EEC on the conservation of wild birds.

These Regulations make amendments to Part I of the Act for the purposes of further implementing that Directive.

Subsection 4(3) of the Act provides certain defences to the killing or injuring by an authorised person (as defined in section 27(1) of the Act) of any wild bird, other than a bird included in Schedule 1 to the Act, contrary to section 1 or to any order made under section 3 of the Act. Under section 4(3)(c) those defences include action necessary for preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, or fisheries.

Regulation 2—

- (a) adds “inland waters” (as defined in regulation 4) to the list of matters in section 4(3)(c) in respect of which action to prevent serious damage may be taken;
- (b) adds sections 4(4)-(6) to the Act to limit the defence available under section 4(3)(c) by providing—
  - (i) that an authorised person must show that there was no other satisfactory solution to the killing or injuring;
  - (ii) that if the killing or injuring was foreseeable, a licence under section 16 of the Act must be applied for as soon as reasonably practical and not determined;
  - (iii) that the authorised person must notify the agriculture Minister (as defined in section 27(1) of the Act) as soon as reasonably practical after the killing or injuring.

Section 16(1) of the Act provides for licences to enable action to be taken which would otherwise be unlawful under sections 1, 5, 6(3), 7 and 8 and orders under section 3 of the Act. Regulation 3(3) adds section 16(1A) to the Act to provide that an appropriate authority shall not issue a licence for any purpose in section 16(1) unless it is satisfied that there is no other satisfactory solution. Regulation 3 also makes various minor amendments to section 16.