

EXECUTIVE NOTE

THE CONSERVATION (NATURAL HABITATS, &C.) AMENDMENT (No.2) (SCOTLAND) REGULATIONS 2008 (SSI/2008/425)

The above instrument was made in exercise of the powers conferred by **section 2(2) of the European Communities Act 1972** and **section 26A of the Wildlife and Countryside Act 1981**. The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to implement Council Directive 92/43/EEC (“the Habitats Directive”).

Background

These amendments are proposed in response to an additional Reasoned Opinion from the European Commission under Article 228 of the Treaty establishing the European Community. That opinion identified continuing perceived insufficiencies in the UK transposition of the Habitats Directive. The opinion was given further to a ruling of the European Court of Justice (ECJ) in case C-6/04 (after which substantial action to better transpose the Directive was taken across the UK in 2007). The Habitats Directive is transposed in Scotland by the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”).

The proposed amendments provide greater clarity and precision in response to the specific deficiencies identified in the additional Reasoned Opinion. The additional Reasoned Opinion also identified deficiencies in the equivalent legislation in England and Wales, Northern Ireland and Gibraltar and it is understood that amendments are being made to this equivalent legislation.

For Scotland, the proposed amendments cover three broad areas, relating to obligations arising from Articles 11, 12 and 16 of the Habitats Directive: the disturbance offence in Regulation 39; the circumstances in which the exception in Regulation 40 relating to the mercy killing and tending of certain injured animals can be applied; and greater specification of the role of Scottish Natural Heritage (SNH) in carrying out surveillance of habitats and species under Regulation 37A and monitoring of incidental capture or killing of certain species under Regulation 41A.

In the first area, the amendment specifies that, in addition to the existing disturbance offences, it is an offence to disturb a European protected species while it is hibernating or migrating.

With regard to the second area, Regulation 40 creates exceptions to the offences provided for by Regulation 39. In relation to the exceptions for mercy killing and tending of certain injured animals, the amendments provide those exceptions should not apply where

it is shown that there was a satisfactory alternative to what was done, or that what was done had a detrimental effect on maintenance of populations of the species concerned at a favourable conservation status in their natural range.

With regard to the third area, the amendments specify that it is SNH who will implement a strategy for the surveillance of the conservation status of habitats and species as required by the Habitats Directive. Similarly it is SNH that must make arrangements for monitoring the incidental capture or killing of species listed in Annex IVa of the Habitats Directive. The surveillance or monitoring may be carried out by SNH itself, by another body or person pursuant to an agreement with SNH, or (in the case of monitoring under Regulation 41A) as a condition of a licence or other authorisation granted by a competent authority.

Consultation

There was a full public consultation on changes to the 1994 Regulations in 2006 following the ruling in case C-6/04 referred to above. There has been no separate consultation on the proposed changes given the need to implement the changes identified as being required in the Reasoned Opinion and to avoid possible referral to the ECJ for the commencement of fining procedures.

Financial Effects

The instrument has no financial effects on the Scottish Government, local government, businesses or charities or the voluntary sector.

Regulatory Impact Assessment

A Regulatory Impact Assessment has not been carried out as this order does not impact on Scottish businesses, charities or the voluntary sector.

Scottish Government Rural Directorate
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