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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 475**

**WILDLIFE  
COUNTRYSIDE**

**The Conservation (Natural Habitats, &c.)  
Amendment (Scotland) Regulations 2004**

*Made* - - - - - *3rd November 2004*  
*Laid before the Scottish*  
*Parliament* - - - - - *4th November 2004*  
*Coming into force* - - - - - *29th November 2004*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and section 26A of the Wildlife and Countryside Act 1981<sup>(2)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 and shall come into force on 29th November 2004.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

“the 2004 Act” means the Nature Conservation (Scotland) Act 2004<sup>(3)</sup>; and

“the 1994 Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(4)</sup>.

**Amendments to the 1994 Regulations**

3. The 1994 Regulations are amended in accordance with regulations 4 to 19.

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(1) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The functions conferred upon a Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) 1981 (c. 69). Section 26A of the 1981 Act was inserted by s.50 and paragraph 22 of schedule 6 to the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#).

(3) 2004 asp 6.

(4) S.I.1994/2716; relevant amendments are 2003 asp 2, S.I. 1996/973, 1997/3055, 1999/1820 and S.S.I. 2000/323.

*Amendments to Part I*

4. In regulation 2 (interpretation and application)–
- (a) in paragraph (1)–
- (i) before the definition of “agriculture Minister” insert–
- ““the 2004 Act” means the Nature Conservation (Scotland) Act 2004<sup>(5)</sup>”;
- (ii) in the definition of “the Habitats Directive” for the words from “as amended by”<sup>(6)</sup> to the end substitute–
- “as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded<sup>(7)</sup>”;
- (iii) for the definition of “land” substitute–
- ““land” includes buildings and other structures, land covered with water, and any right or interest in or over land”;
- (iv) after the definition of “Natura 2000” insert–
- ““natural feature” in relation to land means–
- (a) any of its flora or fauna, or
- (b) any natural habitat existing on that land”;
- (v) for the definition of “statutory undertaker” substitute–
- ““statutory undertaker” has the meaning given in section 58(1) of the 2004 Act”;
- and
- (vi) in the definition of “the Wild Birds Directive” at the end add “as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded”;
- and
- (b) after paragraph (1) insert–
- “(1A) An animal shall not be treated as bred in captivity for the purposes of Part III of these Regulations unless its parents were lawfully held in captivity–
- (a) where the animal is of a viviparous species, when it was born;
- (b) where the animal is of an oviparous species, when the egg was laid.
- (1B) The reference in paragraph (1A) to “lawfully” means without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981.”.
5. In regulation 3(2) (implementation of Directive)–
- (a) for “28 to 38” substitute “35 to 37”; and
- (b) at the end add “Part 2 of the 2004 Act”.

<sup>(5)</sup> [2004 \(asp 6\)](#).<sup>(6)</sup> These words were inserted in the definition of “the Habitats Directive” by S.I. [1997/3055](#).<sup>(7)</sup> O.J. L 236, 23.9.03, p.33.

*Amendments to Part II*

6. In regulation 10 (meaning of “European site” in these Regulations)–
  - (a) after paragraph (1)(c) omit “or”;
  - (b) at the end of paragraph (1)(d) add–
    - “, or
    - (e) a site in Scotland included in a list of sites proposed under regulation 7(1).”;
  - (c) in paragraph (2)–
    - (i) for “regulations 20(1) and (2), 24 and” substitute “regulation”; and
    - (ii) for “relate” substitute “relates”.
7. In regulation 11 (duty to compile and maintain register of European sites) at the end of paragraph (2)(d) add–
  - “, and
  - (e) any site in Scotland included in a list of sites proposed under regulation 7(1).”
8. In regulation 17 (continuation in force of existing agreement, &c.) omit paragraphs (1) and (2).
9. For regulations 18 to 22 substitute–

**“Offence of intentional or reckless damage to a European site**

**18.—(1)** Any person who intentionally or recklessly damages any natural feature by reason of which land is a European site is, subject to paragraph (2), guilty of an offence.

(2) Any person who does anything which would, but for this paragraph, amount to an offence under paragraph (1) is not guilty of the offence if it is shown that–

- (a) the act was the incidental result of a lawful operation,
  - (b) the person who carried out the lawful operation–
    - (i) took reasonable precautions for the purpose of avoiding carrying out the act, or
    - (ii) did not foresee, and could not reasonably have foreseen, that the act would be an incidental result of the carrying out of the lawful operation, and
  - (c) that person took such steps as were reasonably practicable in all the circumstances to minimise the damage caused.
- (3) Any person guilty of an offence under paragraph (1) is liable–
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale,
  - (b) on conviction on indictment, to a fine.

**Application of Chapters 2, 3 and 4 of Part 2 of the 2004 Act**

**19.—(1)** Subject to paragraph (2) and regulations 20 to 22, the following provisions of Part 2 of the 2004 Act apply, for the purposes of these Regulations, in relation to European sites–

- (a) Chapter 2 (nature conservation orders) and schedule 2 (nature conservation orders and related orders: procedure);
- (b) Chapter 3 (land management orders) and schedule 3 (land management orders and related orders: procedure); and
- (c) in Chapter 4–

- (i) section 39 (acquisition of land by SNH);
  - (ii) section 40 (restoration orders);
  - (iii) section 41 (signs, etc.);
  - (iv) section 43 (powers of investigation etc.: police);
  - (v) section 44 (powers of entry: authorised persons) and schedule 4 (powers of entry of authorised persons: further provision); and
  - (vi) section 46 (offences: penalties and time limits);
- (2) For the purposes of these Regulations, any reference in the provisions referred to in paragraph (1)(a) to (c)–
- (a) to a “natural feature” shall be construed as if it was a reference to a “natural feature” within the meaning of regulation 2 of these Regulations;
  - (b) to a “site of special scientific interest” shall be construed as if it was a reference to a European site;
  - (c) to the 2004 Act or any Part thereof, shall be construed as if it was a reference to these Regulations;
  - (d) to a term defined in the 2004 Act shall, unless the context otherwise requires, bear the same meaning as in that Act.

## **Chapter 2 of Part 2 of the 2004 Act**

**20.** The provisions of Chapter 2 of Part 2 of the 2004 Act apply for the purposes of these Regulations as if–

- (a) in section 23 (nature conservation orders)–
  - (i) in subsection (2)(a) for “special interest,” there was substituted–
    - “significance in relation to the objectives of–
      - (i) Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora<sup>(8)</sup> as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded; and
      - (ii) Council Directive [79/409/EEC](#) on the conservation of wild birds<sup>(9)</sup> as last amended by that Act”;
    - (ii) the reference to “international obligation” in subsection (2)(b) included the obligations set out in the Directives referred to in subsection (2)(a) of that section; and
    - (iii) in subsection (3)(b) for the words from “special interest” to “features,” there was substituted “significance in relation to the objectives of the Directives referred to in subsection (2)(a)”;
- (b) in section 27 (offences in relation to nature conservation orders) the reference to “£40,000” was a reference to “level 5 on the standard scale”.

<sup>(8)</sup> O.J. No. L 206, 22.7.92, p.7.

<sup>(9)</sup> O.J. No. L 103, 25.4.79, p.1.

### **Chapter 3 of Part 2 of the 2004 Act**

**21.** The provisions of Chapter 3 of Part 2 of the 2004 Act apply for the purposes of these Regulations as if—

- (a) any reference to a “management agreement” included a reference to a management agreement entered into under regulation 16 of these Regulations;
- (b) in section 29(2)(b) (proposals for land management orders) for “specified in an SSSI notification” there was substituted “by reason of which land is a European site”;
- (c) in section 36(3)(a) (offences in relation to land management orders) the reference to “£40,000” was a reference to “level 5 on the standard scale”.

### **Chapter 4 of Part 2 of the 2004 Act**

**22.** The provisions of Chapter 4 of Part 2 of the 2004 Act referred to in regulation 19(1) apply for the purposes of these Regulations as if—

- (a) any reference to “protected natural feature” was a reference to a natural feature—
  - (i) by reason of which the land is a European site; or
  - (ii) by reason of which a nature conservation order has effect;
- (b) in section 40 (restoration orders)—
  - (i) in subsection (1)(b), the reference to “19(3)” was omitted; and
  - (ii) in subsection (4)(a), the reference to “£40,000” was a reference to “level 5 on the standard scale”;
- (c) in section 41(1) (signs etc.) for the words from “any land” to the end there was substituted “a European site”;
- (d) in section 43 (powers of investigation etc.: police) the references to “this Part” in each place where they occur were references to regulations 18 to 22 of these Regulations; and
- (e) in section 44 (powers of entry: authorised persons)—
  - (i) in subsection (i)—
    - (a) paragraphs (a) and (j) were omitted;
    - (b) in paragraphs (c) and (d), the reference to “management agreement” included a reference to a management agreement entered into under regulation 16 of these Regulations;
    - (c) in paragraph (f), for the words from “section 19(1)” to “20” there were substituted references to regulations 18 to 22 of these Regulations;
    - (d) in paragraph (l), the reference to “section 48(10)” was a reference to regulation 108 of these Regulations; and
  - (ii) in subsection (2)(c), the reference to “section 48(10)” was a reference to regulation 108 of these Regulations.”.

### *Amendments to Part III*

**10.** In regulation 39 (protection of wild animals of European protected species)—

- (a) in paragraph (1)(a) to (c) after “deliberately” where it occurs in each of those paragraphs insert “or recklessly”;

- (b) after paragraph (1) insert–
- “(1A) Subject to the provisions of this Part, it is an offence to deliberately or recklessly, harass any wild animal of a European protected species included in Schedule 2 as a dolphin, porpoise or whale (cetacea).”;
- (c) in paragraph (4)–
- (i) in sub paragraph (a), after “killed”, in the second place where it occurs, insert “at or from a place in Scotland”;
- (ii) omit “or” at the end of that sub paragraph;
- (iii) in sub paragraph (b), after “sold” insert “at a place in Scotland”;
- (iv) omit the words from “For this purpose” to the end; and
- (v) at the end of sub-paragraph (b) add–
- “, or
- (c) that the animal or other thing in question had been killed at, taken from or sold at a place outwith Scotland and–
- (i) that the act of killing, taking or sale would, if it had been committed in Scotland, have been lawful; or
- (ii) that the animal or other thing in question had been brought from the place where it was killed, taken or sold in accordance with the relevant regulations”;
- (d) after paragraph (4), insert–
- “(4A) References in this regulation to–
- (a) “lawful” and “lawfully” mean without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981<sup>(10)</sup>;
- (b) “the relevant regulations” means–
- (i) Council Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade as last amended by Commission Regulation (EC) 834/04<sup>(11)</sup>; and
- (ii) Commission Regulation (EC) 1808/2001 on the implementation of that Council Regulation<sup>(12)</sup>.
- (4B) Subject to the provisions of this Part, it is an offence to knowingly cause or permit to be done an act which is made unlawful by any of the provisions of this regulation.”; and
- (e) in paragraph (6)–
- (i) after “conviction” insert “to imprisonment for a term not exceeding six months or”; and
- (ii) at the end, add “, or to both”.

**11.** In regulation 40 (exceptions from regulation 39)–

- (a) in paragraph (3)(c), for the words from “if” to the end substitute–
- “(“an unlawful act”) if he shows–
- (i) that each of the conditions specified in paragraph (3A) was satisfied in relation to the carrying out of the unlawful act; or

<sup>(10)</sup> 1981 (c. 69).

<sup>(11)</sup> O.J. No. L 61, 3.3.97, p.1. The latest amending regulation is at O.J. No. L 127, 29.04.04, p.40.

<sup>(12)</sup> O.J. No. L 250, 19.09.01, p.1.

- (ii) that the unlawful act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.”; and
  - (b) after paragraph (3), insert–
    - “(3A) Those conditions are that–
      - (a) the unlawful act was the incidental result of a lawful operation or other activity;
      - (b) the person who carried out the lawful operation or other activity–
        - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
        - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
      - (c) the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal of a European protected species, or the damage or destruction to the breeding site or resting place, in relation to which the unlawful act was carried out.”; and
  - (c) after paragraph (6) insert–
    - “(6A) A person authorised in accordance with paragraph (5) may not rely on the defence provided by paragraph (5) as respects any action taken at any time unless he notified the Scottish Ministers as soon as reasonably practicable after that time that he had taken the action.”.
- 12.** In regulation 41(6) (prohibition of certain methods of taking or killing wild animals)–
- (a) after “conviction” insert “to imprisonment for a term not exceeding six months or”; and
  - (b) at the end add “, or to both”.
- 13.** In regulation 43 (protection of wild plants of European protected species)–
- (a) in paragraph (1) after “deliberately” insert “or recklessly”;
  - (b) in paragraph (4), for the words from “if” to the end substitute–
    - “(“an unlawful act”) if he shows that–
      - (a) the unlawful act was the incidental result of a lawful operation or other activity;
      - (b) the person who carried out the lawful operation or other activity–
        - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
        - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
      - (c) the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent, such steps as were reasonably practicable in the circumstances to minimise the damage to the wild plant of a European protected species in relation to which the unlawful act was carried out.”;
  - (c) after paragraph (5) insert–

“(5A) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the provisions of this regulation shall be guilty of an offence.”; and

- (d) in paragraph (7)—
  - (i) after “conviction” insert “to imprisonment for a term not exceeding six months or”;
  - (ii) for “4” substitute “5”; and
  - (iii) at the end add “, or to both”.

**14.** In regulation 44(2) (grant of licences for certain purposes)—

- (a) in sub-paragraph (a) after “scientific” insert “, research”;
- (b) in sub-paragraph (c) after “animals” insert “, including wild birds,”; and
- (c) after sub-paragraph (c) insert—
  - “(ca) conserving natural habitats;”.

**15.** In regulation 46(2) (false statements made for obtaining licence)—

- (a) after “conviction” insert “to imprisonment for a term not exceeding six months or”;
- (b) for “4” substitute “5”; and
- (c) at the end add “, or to both”.

*Amendments to Part IV*

**16.** In regulation 47(1) (application of the provisions of this Part)—

- (a) for “54” substitute “53A”; and
- (b) after regulation 53 insert—

**“Control of operations requiring consent**

**53A.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the granting of any consent under—

- (a) section 13(4) of the 2004 Act to permit a public body to carry out an operation; or
- (b) section 16(3) of the 2004 Act to permit an owner or occupier of land within a site of special scientific interest to carry out an operation requiring consent on the land.

(2) Where in such a case SNH considers that any adverse effects of the plan or project on the integrity of a European site would be avoided if the consent were subject to conditions, it may grant consent subject to those conditions.

(3) Where, in any case, whether in pursuance of sections 13(4) or 16(3) of the 2004 Act or otherwise, in light of the conclusions of an appropriate assessment made under regulation 48(1), SNH has not given consent for an operation, but it considers that there is a risk that the operation may nevertheless be carried out, it shall notify Scottish Ministers.”.

*Amendments to Part V*

**17.** In regulation 101 (enforcement)—

- (a) in paragraph (1)(b)—
  - (i) at the beginning insert “search for,”;



- (ii) for “have in his possession” substitute “may have used, or may have or have had in his possession,”; and
  - (iii) after “found” insert “in or”;
- (b) after paragraph (1)(b) insert–
  - “(ba) arrest that person;”;
- (c) in paragraph (2)–
  - (i) after “committing” insert “or has committed”; and
  - (ii) for “dwelling-house” substitute “dwelling or lockfast premises”;
- (d) in paragraph (3)–
  - (i) for “information” substitute “evidence”; and
  - (ii) for the words from “(with” to “premises” in the second place where it occurs substitute “to enter those premises, if necessary using reasonable force, and search them”; and
- (e) after paragraph (3) insert–
  - “(4) A warrant under paragraph (3) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.
  - (5) A constable authorised by virtue of this regulation to enter any land must, if required to do so by the occupier or anyone acting on the occupier’s behalf, produce evidence of the constable’s authority.
  - (6) A constable who enters any land in the exercise of a power conferred by this regulation–
    - (a) may–
      - (i) be accompanied by any other persons; and
      - (ii) take any machinery, other equipment or materials on to the land, for the purpose of assisting the constable in the exercise of that power;
    - (b) may take samples of any articles or substances found there and remove the samples from the land.
  - (7) A power specified in paragraph (6)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.
  - (8) A constable leaving any land which has been entered in exercise of a power conferred by paragraph (2) or by a warrant under paragraph (3), being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.”.

**18. After regulation 101 insert–**

**“Application of sections 19ZC and 19ZD of the Wildlife and Countryside Act 1981**

**101A.**—(1) Subject to paragraphs (2) to (4), sections 19ZC (wildlife inspectors: Scotland) and 19ZD (power to take samples: Scotland) of the Wildlife and Countryside Act 1981(13) apply, for the purposes of these Regulations.

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(13) Sections 19ZC and 19ZD of that Act were inserted by the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), section 50 and schedule 6, paragraph 17.

(2) For the purposes of these Regulations, any reference in section 19ZC or 19ZD of the Wildlife and Countryside Act 1981 to that Act or any part thereof, shall be construed as a reference to these Regulations.

(3) The provisions of section 19ZC of the Wildlife and Countryside Act 1981 apply for the purposes of these Regulations as if—

- (a) in subsection (3)—
  - (i) in paragraph (a), the reference to “section 6, 9(5) or 13(2)” was a reference to regulation 39(2) or 43(2) of these Regulations;
  - (ii) paragraphs (b) to (d) were omitted; and
  - (iii) in paragraph (e)(i) and (ii), “registration or” was omitted;
- (b) in subsection (4)—
  - (i) in paragraph (a), for “paragraphs (a) to (c) do” there was substituted “paragraph (a) does”;
  - (ii) in paragraph (a)(i) and (ii) “registration or” was omitted; and
  - (iii) paragraph (b) was omitted;
- (c) in subsection (5), for the words from “section 6” to “14A” there was substituted a reference to regulation 39(2) or 43(2) of these Regulations;
- (d) in subsection (6), “bird or other” was omitted in each place where it occurs;
- (e) for subsection (9) there was substituted—
  - “(9) In this section—
    - “relevant licence” means a licence under regulation 44 of the Conservation (Natural Habitats, &c.) Regulations 1994(14) which authorises anything which would otherwise be an offence under regulation 39(2) or 43(2) of those Regulations;
    - “specimen” means any animal or plant or any part of, or anything derived from, an animal or plant.”; and
- (f) after subsection (9) there was inserted—
  - “(10) A person guilty of an offence under this section is liable on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.”.

(4) the provisions of section 19ZD of the Wildlife and Countryside Act 1981 apply for the purposes of these Regulations as if—

- (a) in subsection (1)—
  - (i) the reference to “section 19” was a reference to regulation 101 of these Regulations; and
  - (ii) the reference to “this Part” was a reference to Part III of these Regulations;
- (b) in subsection (2), the reference to “this Part” was a reference to Part III of these Regulations;
- (c) in subsection (3)—
  - (i) for the words from “section 6” to “14A” there was substituted a reference to regulation 39(2) or 43(2) of these Regulations; and
  - (ii) “to (d)” was omitted;

- (d) in subsection (4), for the words from “section 6” to “14A” there was substituted a reference to regulation 39(2) or 43(2) of these Regulations;
- (e) in subsection (5), “bird, other” was omitted;
- (f) in subsections (6) and (7), “bird or other” was omitted;
- (g) in subsection (8), the reference to “section 19(2)” was a reference to regulation 101(2) of these Regulations;
- (h) in subsection (10)(b)–
  - (i) for “a bird, other” there was substituted “an”; and
  - (ii) “bird, other” was omitted; and
- (i) after subsection (10) there was inserted–

“(11) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.”.

**19.** In regulation 102(2) (proceedings for offences: venue, time limits)–

- (a) for the words from “for–” to “regulation 43(1)”, substitute “for any such offence”;
- (b) for “two” substitute “three”; and
- (c) at the end, add “or, in the case of a continuous contravention, after the last date on which the offence was committed”.

*Transitional Provisions and Revocations*

**Transitional Provisions**

**20.**—(1) The provisions of this regulation apply to a notification to which regulation 18 of the 1994 Regulations applies, as that notification had effect immediately before the day on which these Regulations come into force.

(2) Such a notification is to be treated as a notification given under section 3(1) of, and confirmed under paragraph 4 of schedule 1 to, the 2004 Act.

(3) Any operation specified in such a notification is to be treated as an operation requiring consent under section 3(7) of the 2004 Act.

(4) Scottish Natural Heritage is to be treated as having given its written consent on an application under section 16(2) of the 2004 Act to the carrying out of an operation which is, by virtue of paragraph (3), to be treated as an operation requiring consent, if Scottish Natural Heritage has, on or before the day before these Regulations come into force, given its consent in writing to the carrying out of the operation.

(5) Paragraph 4 of schedule 5 to the 2004 Act shall apply to such a notification as if it was an existing notification within the meaning given in paragraph 2 of that schedule.

(6) Scottish Natural Heritage may, despite section 6(2) of the 2004 Act, carry out at such time as it thinks fit the first review under section 6(1)(b) of that Act of an operation which is, by virtue of paragraph (3), to be treated as an operation requiring consent.

(7) A permission to carry out an operation specified in such a notification given before these Regulations come into force is not to be treated as having been given in accordance with section 15 of the 2004 Act.

**21.**—(1) Any special nature conservation order made under regulation 22 of the 1994 Regulations–

- (a) which was made before the day on which these Regulations come into force, and
- (b) in respect of which notice has been given under paragraph 6 of Schedule 1 to the 1994 Regulations of a decision to confirm it,

is to be treated as a nature conservation order made under section 23 and confirmed under paragraph 5 of schedule 2 to the 2004 Act.

(2) Paragraph 11(3) of schedule 5 to the 2004 Act shall apply to an order referred to in paragraph (1) as if it was an order referred to in paragraph 11(3) of that schedule.

### **Revocations**

**22.** The following provisions of the 1994 Regulations are revoked:–

- (a) regulations 23 to 27;
- (b) regulation 32;
- (c) regulations 87 to 93;
- (d) regulations 98 and 99; and
- (e) Schedule 1.

St Andrew's House, Edinburgh  
3rd November 2004

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

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

These Regulations amend the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(15)</sup> (“the 1994 Regulations”). The provisions in these Regulations relating to site protection bring European sites into line with the protection regime set out in Part 2 of the Nature Conservation (Scotland) Act 2004<sup>(16)</sup> (“the 2004 Act”). Further protection is given to European protected species through amendments to Part III of the 1994 Regulations which reflect the provisions relating to species protection contained in Part I of the Wildlife and Countryside Act 1981<sup>(17)</sup>.

Regulations 4 and 5 amend Part I of the 1994 Regulations (introductory provisions). Regulation 4 updates existing definitions in regulation 2 of the 1994 Regulations and regulation 5, inter alia, includes references to Part 2 of the 2004 Act in regulation 3(2) of the 1994 Regulations so as to impose the general duties in that Regulation on the Scottish Ministers and SNH in respect of their functions under the 2004 Act.

Regulations 6 to 9 amend Part II of the 1994 Regulations (conservation of natural habitats and habitats of species). Regulations 6 and 7 amend regulations 10 and 11 of the 1994 Regulations which deal with the meaning and registration of a European site. Regulation 6 extends the category of European sites to include candidate special areas of conservation.

Regulation 8 revokes regulation 17(1) and (2) of the 1994 Regulations which deal with management agreements and things done under certain enactments.

Regulation 9 inserts new regulations 18 to 22 into the 1994 Regulations.

The inserted regulation 18 creates an offence of reckless or intentional damage to a natural feature by reason of which land is a European site.

The inserted regulation 19 applies certain provisions of Part 2 of the 2004 Act to European sites for the purposes of the 1994 Regulations, subject to regulations 20 to 22. The provisions from the 2004 Act which are applied to European sites create, inter alia, new powers in relation to European sites to enable Scottish Ministers to make nature conservation orders, land management orders and for SNH to acquire land compulsorily or by agreement. Powers are also created to enable a court to make restoration orders, SNH to erect signs on any land for the purpose of providing information to the public in relation to a European site, the police to investigate and for authorised persons to have a power of entry.

The inserted regulations 20 to 22 set out the changes to the provisions in Chapters 2, 3 and 4 of Part 2 of the 2004 Act which are necessary in order to apply those provisions for the purposes of these Regulations.

Part III of the 1994 Regulations (protection of species) contains provisions to ensure the protection of European protected species of animals and plants. The amendments to Part III, which are made by regulations 10 to 15 of these Regulations, bring the protection regime for European protected species into line with the protection regime for animals and plants set out in Part I of the Wildlife and Countryside Act 1981.

Regulation 16 makes amendments to Part IV of the 1994 Regulations (adaptation of planning and other controls) which are required in consequence of the revocation of regulation 20 of the 1994

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<sup>(15)</sup> S.I. 1994/2716.

<sup>(16)</sup> 2004 asp 6.

<sup>(17)</sup> 1981 (c. 68). Part I of that Act was amended by section 50, of and schedule 6 to, the 2004 Act.

**Status:** This is the original version (as it was originally made).

Regulations in circumstances where an appropriate assessment needs to be undertaken in relation to the granting of a consent under section 13(4) or 16(3) of the 2004 Act.

Regulations 17 to 19 contain amendments to Part V of the 1994 Regulations (supplementary provisions). Regulation 17 amends regulation 101 of the 1994 Regulations which deals with enforcement for offences committed under Part III of the 1994 Regulations to bring it into line with the enforcement regime set out in the Wildlife and Countryside Act 1981 for offences committed under Part I of that Act.

Regulation 18 inserts a new regulation 101A into the 1994 Regulations. That inserted regulation applies sections 19ZC and 19ZD of the Wildlife and Countryside Act 1981<sup>(18)</sup> for the purposes of the 1994 Regulations, to give powers of entry, and powers to take samples, to wildlife inspectors and constables in connection with various suspected offences under Part III of the 1994 Regulations.

Regulations 20 and 21 set out the transitional arrangements which are necessary in light of these Regulations and regulation 22 revokes certain provisions of the 1994 Regulations.

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<sup>(18)</sup> Sections 19ZC and 19ZD were inserted into Part I of that Act by paragraph 17 of schedule 6 to the Nature Conservation (Scotland) Act 2004.