

Draft Regulations laid before the Scottish Parliament under paragraph 2(2) of schedule 2 of the European Communities Act 1972 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

WILDLIFE

The Conservation (Natural Habitats, &c.) (Miscellaneous Amendments) (Scotland) Regulations 2019

Made - - - - 2019
Coming into force - - 1st October 2019

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) and paragraph 1A of schedule 2 of the European Communities Act 1972⁽¹⁾ (“the 1972 Act”) and all other powers enabling them to do so.

In accordance with paragraph 2(2) of schedule 2 of the 1972 Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Scottish Ministers that it is expedient for the references in these Regulations to the list of invasive alien species of Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species⁽²⁾ to be construed as references to that list as amended from time to time.

Citation and commencement

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) (Miscellaneous Amendments) (Scotland) Regulations 2019.

(2) These Regulations come into force on 1 October 2019.

(1) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of schedule 8 of the Scotland Act 1998 (c.46) (“the 1998 Act”) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by section 3(3) and Part 1 of the schedule of the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”). The functions conferred upon the Minister of the Crown under section 2(2), insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of schedule 2 was inserted by section 28 of the 2006 Act and was relevantly amended by Part 1 of the schedule of the 2008 Act. Section 2(2) and paragraph 1A of schedule 2 are prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) from exit day (see section 20 of that Act).

(2) OJ L 317, 4.11.2014, p.35.

Amendment of the Wildlife and Countryside Act 1981

- 2.—(1) The Wildlife and Countryside Act 1981⁽³⁾ is amended as follows.
 (2) After section 14A⁽⁴⁾ (prohibition on sale etc. of invasive animals or plants) insert—

“14AA Contravention of Invasive Alien Species Regulation

- (1) A person commits an offence under this section if—
- (a) the person contravenes a paragraph of Article 7(1) of the Invasive Alien Species Regulation mentioned in subsection (2) in relation to an invasive alien species, and
 - (b) the activity which constitutes that contravention does not constitute an offence under section 14, 14ZC or 14A.
- (2) The paragraphs referred to in subsection (1)(a) are—
- (a) paragraph (b) (keeping, including in contained holding),
 - (b) paragraph (c) (breeding, including in contained holding),
 - (c) paragraph (d) (transporting to, from or within the Union, except for the transportation of species to facilities in the context of eradication),
 - (d) paragraph (e) (placing on the market),
 - (e) paragraph (f) (using or exchanging),
 - (f) paragraph (g) (permitting to reproduce, growing or cultivating, including in contained holding),
 - (g) paragraph (h) (releasing into the environment).
- (3) Subject to subsection (4), it is a defence to a charge of committing an offence under this section to show that the person took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (4) Where the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged must not, without leave of the court, be entitled to rely on the defence unless, within the period of 7 days before the hearing, the person has served on the prosecutor a notice giving such information or assisting in the identification of the other person as was then in the person’s possession.
- (5) Schedule 9B contains provision about defences to a charge of committing an offence under—
- (a) this section, or
 - (b) section 14ZC or 14A, where the activity to which the charge relates contravenes Article 7(1) of the Invasive Alien Species Regulation.
- (6) In this section—
- “Invasive Alien Species Regulation” means Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species,
- “invasive alien species” means a species, sub-species or lower taxon of animal, plant, fungus or micro-organism included on the list of invasive alien species of Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of that Regulation, as amended from time to time.”.

(3) 1981 c.69.

(4) Section 14A was inserted by paragraph 13 of schedule 6 of the Nature Conservation (Scotland) Act 2004 (asp 6) (“the 2004 Act”) and amended by section 14(4) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6) (“the 2011 Act”).

- (3) In section 14C(5) (non-native species etc.: code of practice)—
- (a) in subsection (1)(a), after “14A” insert “, 14AA”,
 - (b) in subsection (2)—
 - (i) after paragraph (b) insert—

“(ba) which species, sub-species or lower taxons of animal, plant, fungus or micro-organism are considered to be invasive alien species,”
 - (ii) after paragraph (i) insert—

“(ia) best practice for—

 - (i) keeping invasive alien species in contained holding,
 - (ii) measures to ensure such species cannot reproduce or escape,

(ib) the circumstances in which an animal which belongs to an invasive alien species is considered to be a companion animal,”
 - (c) in subsection (10), after “14A,” insert “14AA,”
 - (d) after subsection (10) insert—

“(11) In subsection (2)—

“contained holding” means closed facilities from which escape or spread is not possible,

“invasive alien species” has the same meaning as in section 14AA.”
- (4) In section 16(6) (power to grant licences)—
- (a) in subsection (4)(c), for “and 14A” substitute “, 14A and 14AA”,
 - (b) after subsection (4A) insert—

“(4B) Schedule 9B contains provision restricting the granting of licences under subsection (4)(c) permitting activities which contravene Article 7(1)(b) to (h) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species.”
- (5) In section 19ZC(7) (wildlife inspectors: Scotland)—
- (a) in subsection (3)(d), after “14A,” insert “14AA,”
 - (b) in subsection (5), after “14A,” insert “14AA,”
 - (c) in subsection (9)—
 - (i) in paragraph (b) of the definition of “relevant registration or licence”, for “or 14A” substitute “, 14A or 14AA”,
 - (ii) in the definition of “specimen”, for “or plant”, in both places where it occurs, substitute “, plant, fungus or micro-organism”.
- (6) In section 19ZD(8) (power to take samples: Scotland)—
- (a) in subsection (3), after “14A,” insert “14AA,”
 - (b) in subsection (4), after “14A,” insert “14AA,”
- (7) In section 21(9) (penalties, forfeitures etc.)—

(5) Section 14C was inserted by section 15 of the 2011 Act and amended by schedule 2 of the Forestry and Land Management (Scotland) Act 2018 ([asp 8](#)).

(6) Section 16 was relevantly amended by paragraph 15 of schedule 6 of the 2004 Act and section 17(2) of the 2011 Act.

(7) Section 19ZC was inserted by paragraph 17 of schedule 6 of the 2004 Act and amended by section 22(4) of the 2011 Act.

(8) Section 19ZD was inserted by paragraph 17 of schedule 6 of the 2004 Act and amended by section 22(5) of the 2011 Act.

(9) Section 21 was relevantly amended by paragraph 6 of schedule 3 of the Criminal Justice (Scotland) Act 2003 ([asp 7](#)), paragraph 19 of schedule 6 of the 2004 Act and section 17(3) of the 2011 Act.

- (a) in subsection (1)—
 - (i) after “19ZC(3)(d)” insert “or an offence to which subsection (1B) applies”,
 - (ii) after “19ZD” insert “(other than an offence to which subsection (1B) applies)”,
- (b) after subsection (1) insert—
 - “(1A) Subsection (1B) applies to an offence which—
 - (a) is committed under—
 - (i) section 19ZC, other than an offence under section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by section 19ZC(3)(d), or
 - (ii) section 19ZD, and
 - (b) relates to a wildlife inspector acting in exercise of powers for the purpose of ascertaining whether an offence has been committed under section 14AA.
 - (1B) A person who commits an offence to which this subsection applies is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the standard scale, or to both.”,
- (c) after subsection (4) insert—
 - “(4ZZA) A person who commits an offence under section 14AA is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”,
- (d) in subsection (6)(b)—
 - (i) after “14A,” insert “14AA,”,
 - (ii) for “or plant” substitute “, plant or other thing”.

- (8) After schedule 9A(10) (species control agreements and orders (England and Wales)) insert—

“SCHEDULE 9B (introduced by sections 14AA(5) and 16(4B))

Invasive alien species: defences and licences

Part 1

Interpretation

Interpretation

- 1. In this schedule—

“Invasive Alien Species Regulation” means Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species,

“contained holding” means closed facilities from which escape or spread is not possible,

“ex-situ conservation” means the conservation of components of biological diversity outside their natural habitat,

“invasive alien species” means a species, sub-species or lower taxon of animal, plant, fungus or micro-organism included on the Union list,

“research” means descriptive or experimental work, undertaken under regulated conditions to obtain new scientific findings or to develop new products, including the initial phases of identification, characterisation and isolation of genetic features, other than those features which make a species invasive, of invasive alien species only insofar as essential to enable the breeding of those features into non-invasive species,

“specimen” means a live specimen and includes any part, gamete, seed, egg or propagule of a species, as well as any hybrids, varieties or breeds that might grow, hatch or reproduce, as the case may be,

“Union list” means the list of invasive alien species of Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of the Invasive Alien Species Regulation, as amended from time to time.

Part 2

Defences

Companion animals

- 2.—(1) This paragraph applies where—
- (a) a person is charged with an offence under section 14ZC or 14AA,
 - (b) the charge relates to an animal, and
 - (c) the activity to which the charge relates contravenes one of the following paragraphs of Article 7(1) of the Invasive Alien Species Regulation—
 - (i) paragraph (b) (keeping, including in contained holding),
 - (ii) paragraph (d) (transporting to, from or within the Union, except for the transportation of species to facilities in the context of eradication).
- (2) It is a defence to the charge to show that—
- (a) immediately before the inclusion on the Union list of the species to which the animal belongs, the animal was kept as a companion animal,
 - (b) at all material times the animal was kept—
 - (i) as a companion animal, or
 - (ii) for the purpose of transporting the animal to a place mentioned in sub-paragraph (3), and
 - (c) at all material times—
 - (i) the animal was kept in contained holding, and
 - (ii) appropriate measures were in place to ensure that it could not reproduce or escape.
- (3) The places referred to in sub-paragraph (2)(b)(ii) are—
- (a) an establishment to which a relevant licence or permit has been granted,
 - (b) a facility to which a relevant licence has been granted,
 - (c) a place where the animal was to be humanely killed.
- (4) In sub-paragraph (3)—

- (a) “relevant licence or permit” means, in relation to an establishment—
 - (i) a licence granted under section 16(4)(c) by virtue of paragraph 6,
 - (ii) a permit granted under article 35 of the Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527),
 - (iii) a permit granted under any provision in legislation which applies in relation to Northern Ireland and which enables a permit to be issued in accordance with Article 8 or 9 of the Invasive Alien Species Regulation,
- (b) “relevant licence” means, in relation to a facility—
 - (i) a licence granted under section 16(4)(c) by virtue of paragraph 7,
 - (ii) a licence granted under article 36(1) of the Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527), for the purpose mentioned in article 36(2) (d) of that Order,
 - (iii) a licence granted under any provision in legislation which applies in relation to Northern Ireland and enables a licence to be issued for the keeping of an animal by a facility until the end of its natural life in accordance with Article 31(4) of the Invasive Alien Species Regulation.

Commercial stocks

- 3.—(1) This paragraph applies where—
- (a) a person who keeps a commercial stock of specimens of invasive alien species is charged with an offence under section 14ZC, 14A or 14AA,
 - (b) the charge relates to such a specimen, and
 - (c) the activity to which the charge relates contravenes one of the following paragraphs of Article 7(1) of the Invasive Alien Species Regulation—
 - (i) paragraph (b) (keeping, including in contained holding),
 - (ii) paragraph (d) (transporting to, from or within the Union, except for transportation of species to facilities in the context of eradication),
 - (iii) paragraph (e) (placing on the market),
 - (iv) paragraph (f) (using or exchanging).
- (2) It is a defence to the charge to show that—
- (a) the specimen was acquired by the person before the inclusion on the Union list of the species to which the specimen belongs,
 - (b) the activity to which the charge relates was not carried out after the end of the relevant period following the inclusion on the Union list of the species to which the specimen belongs, and
 - (c) that activity is mentioned in sub-paragraph (3).
- (3) The activities referred to in sub-paragraph (2)(c) are—
- (a) sale or transfer to an establishment which holds a relevant licence or permit, provided that the conditions in paragraph (4) are met,
 - (b) a scientific or medicinal activity pursuant to a relevant licence or permit, provided that the conditions in paragraph (4) are met,
 - (c) destruction (in the case of a plant, fungus or micro-organism) or humane killing (in the case of an animal) of the specimen to exhaust the keeper’s stock, or

- (d) sale or transfer to a non-commercial user, provided that the conditions in paragraph (4) are met.
- (4) The conditions referred to in sub-paragraph (3) are that, at all material times—
 - (a) the specimen was kept and transported in contained holding, and
 - (b) appropriate measures were in place to ensure that it could not reproduce or escape.
- (5) For the purposes of sub-paragraph (2)(b), the relevant period is—
 - (a) in relation to an activity mentioned in sub-paragraph (3)(a) to (c), 2 years,
 - (b) in relation to an activity mentioned in sub-paragraph (3)(d), 1 year.
- (6) In sub-paragraph (3), “relevant licence or permit” means—
 - (a) for the purposes of sub-paragraph (3)(a)—
 - (i) a licence granted under section 16(4)(c) by virtue of paragraph 6(b)(i) or (ii),
 - (ii) a permit granted under section 35(1)(a) of the Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527),
 - (iii) a permit granted under any provision in legislation which applies in relation to Northern Ireland and enables permits to be issued for research or ex-situ conservation in accordance with Article 8 of the Invasive Alien Species Regulation,
 - (b) for the purposes of sub-paragraph (3)(b)—
 - (i) a licence granted under section 16(4)(c) by virtue of paragraph 6(b)(iii),
 - (ii) a permit granted under article 35(1)(b) of the Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527),
 - (iii) a permit granted under any provision in legislation which applies in relation to Northern Ireland and enables permits to be issued for scientific production and subsequent medicinal use in accordance with Article 8 of the Invasive Alien Species Regulation.

Non-commercial owners: receipt of commercial stocks

- 4.—(1) This paragraph applies where—
- (a) a person is charged with an offence under section 14ZC or 14AA, and
 - (b) the activity to which the charge relates contravenes one of the following paragraphs of Article 7(1) of the Invasive Alien Species Regulation—
 - (i) paragraph (b) (keeping, including in contained holding),
 - (ii) paragraph (d) (transporting to, from or within the Union, except for the transportation of species to facilities in the context of eradication).
- (2) It is a defence to the charge to show that—
- (a) the specimen to which the charge relates was received by the person—
 - (i) from a keeper of commercial stocks of specimens of the species to which the specimen belongs, and
 - (ii) before the end of the period of one year beginning with the date on which that species was included on the Union list, and
 - (b) at all material times—
 - (i) the specimen was kept and transported in contained holding, and
 - (ii) appropriate measures were in place to ensure that it could not reproduce or escape.

Part 3

Licences

Restrictions

5.—(1) The appropriate authority must not grant a licence under section 16(4)(c) permitting an activity which contravenes one of the following paragraphs of Article 7(1) of the Invasive Alien Species Regulation unless any of paragraphs 6 to 9 apply—

- (a) paragraph (b) (keeping, including in contained holding),
- (b) paragraph (c) (breeding, including in contained holding),
- (c) paragraph (d) (transporting to, from or within the Union, except for the transportation of species to facilities in the context of eradication),
- (d) paragraph (f) (using or exchanging),
- (e) paragraph (g) (permitting to reproduce, growing or cultivating, including in contained holding).

(2) The appropriate authority must not grant a licence under section 16(4)(c) permitting an activity which contravenes one of the following paragraphs of that Article unless paragraph 8 or 9 applies—

- (a) paragraph (e) (placing on the market),
- (b) paragraph (h) (releasing into the environment).

Research etc.

6. This paragraph applies if the licence—

- (a) is granted to an establishment,
- (b) permits an activity to be done in the course of—
 - (i) research on an invasive alien species,
 - (ii) ex-situ conservation of an invasive alien species,
 - (iii) scientific production, and subsequent medicinal use of, a product derived from an invasive alien species where its use is necessary for the advancement of human health, or
 - (iv) in exceptional circumstances, such other activities as are justified for reasons of compelling public interest, including those of a social or economic nature, in accordance with Article 9 of the Invasive Alien Species Regulation, and
- (c) is subject to the conditions specified in Article 8(2) and (3) of that Regulation.

Keeping animals until the end of their natural lives

7. This paragraph applies if—

- (a) the licence is granted for the purpose of the keeping of an animal by a facility (including any necessary ancillary activities such as transportation) until the end of its natural life in accordance with Article 31(4) of the Invasive Alien Species Regulation, and
- (b) the appropriate authority is satisfied that all appropriate controls are in place to ensure that reproduction or escape of the animal is not possible.

Eradication measures

8. This paragraph applies if the licence is—

- (a) granted for the purpose of implementation of an eradication measure pursuant to Article 17 of the Invasive Alien Species Regulation, and
- (b) subject to such conditions as are, in the opinion of the appropriate authority, necessary to meet the aim of ensuring that the eradication measure to which the licence relates will be effective in achieving the complete and permanent removal of the population of the invasive alien species concerned.

Management measures

9.—(1) This paragraph applies if the licence is granted for the purpose of implementation of a management measure pursuant to Article 19 of the Invasive Alien Species Regulation.

(2) But, where the licence is granted for the purpose of the commercial use, on a temporary basis, of an invasive alien species as part of such a management measure pursuant to Article 19(2) of that Regulation, this paragraph applies only if the appropriate authority is satisfied that—

- (a) there is strict justification for that use, and
- (b) all appropriate controls are in place to avoid any further spread of the species concerned.”.

Amendment of the Conservation (Natural Habitats, &c.) Regulations 1994

3. In regulation 3A(4) of the Conservation (Natural Habitats, &c.) Regulations 1994(11) (duties in relation to wild bird habitat), for “23 and 25” substitute “23A to 24”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations primarily amend the Wildlife and Countryside Act 1981 (“the 1981 Act”) to further implement Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species (“the Invasive Alien Species Regulations”). These Regulations extend to Scotland.

Regulation 2(2) inserts section 14AA into the 1981 Act, making it an offence for a person to contravene Article 7(1)(b) to (h) of the Invasive Alien Species Regulations (where the activity does not constitute an offence under sections 14, 14ZC or 14A of the 1981 Act).

Regulation 2(3) amends section 14C of the 1981 Act to extend the information that may be included in a code of practice made by the Scottish Ministers under that section. The information may now include which species, sub-species or lower taxons of animal, plant, fungus or micro-organism are considered to be invasive alien species. A code of practice may also include information on best practice for keeping an invasive alien species in a contained holding, best practice for measures to ensure that an invasive alien species cannot reproduce or escape, and the circumstances in which an invasive alien species is considered to be a companion animal.

Regulation 2(7) amends section 21 of the 1981 Act to make provision for penalties in respect of which a person, who commits an offence under section 14AA, section 19ZC (as amended by regulation 2(5)), or section 19ZD (as amended by regulation 2(6)), is liable.

Regulation 2(8) inserts schedule 9B into the 1981 Act. The schedule contains provision about defences to a charge of committing an offence under section 14AA, or section 14ZC or 14A where the activity to which the charge relates contravenes Article 7(1) of the Invasive Alien Species Regulations. Schedule 9B also contains provision restricting the granting of a licence under section 16(4)(c) of the 1981 Act (as amended by regulation 2(4)).

Regulation 3 amends the Conservation (Natural Habitats, &c.) Regulations 1994 to correct an error.