

**EXECUTIVE NOTE TO**  
**THE CONSERVATION (NATURAL HABITATS, &C.) AMENDMENT**  
**(SCOTLAND) REGULATIONS 2008 SSI/2008/ 17**

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, both as amended**. The instrument is subject to negative resolution procedure.

**Policy Objectives**

The purpose of the instrument is to further implement Council Directive 92/43/EEC (“the Habitats Directive”) and to apply enhanced sentencing powers now available in respect of all species protected by that Directive. These powers are used to ensure uniform maximum sentences in Scotland for the offences of possession, transport and sale of species listed on Annex IV to the Habitats Directive. In addition, the instrument transposes an amendment made to the Habitats Directive on the accession of Bulgaria and Romania to the EU by allowing for the possession, sale and transport of specimens of wolves taken in Bulgaria.

**Background**

The current amendments are proposed further to legislation made in response to the ruling of the European Court of Justice (ECJ) on infraction case C-131/05; this found that the UK had failed to properly implement the Habitats Directive. A result of the ruling was that Scotland was required to extend protection to all Annex IV species, whether native to Great Britain or not. This was achieved as part of the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (“the 2007 Amendments”), which came into force on 15 February 2007.

In prohibiting the trade in certain species, the Habitats Directive exempts some Annex IV species populations. When Bulgaria and Romania joined the EU on 1 January 2007 Bulgarian wolves were made an exempted population. The result of that amendment to the Habitats Directive is that the Scottish legislation over implements the Directive, by extending protection to a population of animals not protected under the Directive. The unilateral prohibition of trade in an item not prohibited by European legislation may contravene EC rules on free trade. The amendment to the Regulations is designed to avoid this problem.

The second issue with which the instrument deals relates to maximum custodial sentences for offences under the 1994 Regulations. When the 2007 Amendments were drafted, section 26A of the Wildlife and Countryside Act 1981 (“the 1981 Act”) provided that regulations made under section 2(2) of the European Communities Act 1972, implementing the Habitats Directive, could provide for a maximum prison sentence on summary conviction of 6 months. Such regulations would normally only be able to impose a maximum 3 month sentence on summary conviction.

However, the power under section 26A of the 1981 Act only referred to the Habitats Directive as it was then amended by the Act of Accession of Austria, Finland and Sweden, and by Council Directive 97/62/EC of 27 October 1997. Species were later added to Annex IV of the Habitats Directive by the Act of Accession of the Czech Republic etc. in 2003 and on the accession of Bulgaria and Romania in 2007. Technically then, any offence relating to a species added to Annex IV after October 1997 could only receive a 3 month maximum imprisonment penalty in Scotland, as opposed to offences relating to species appearing on Annex IV up to and including October 1997, which could attract a 6 month penalty. Accordingly, a dual system of penalties was created by the 2007 amending Regulations.

Section 26A of the 1981 Act was amended by the Criminal Proceedings etc (Reform) (Scotland) Act 2007, allowing for the imposition of a 6 month maximum penalty in respect of all species protected under the Directive, irrespective of when added. The amendment proposed in this instrument uses that enhanced sentencing power to apply the same maximum penalty for offences relating to all species protected under the Directive.

### **Consultation**

There was a full public consultation on changes to The Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”) in 2006 following the ruling of the European Court of Justice (ECJ) on infraction case C-131/05 . The consultation ran for a period of 8 weeks from 5 June 2006 and concluded on 28 July. The shortened consultation period was held to be justifiable given the probability of further referral to the European Court of Justice and the possibility of fines being imposed should the UK fail to take the necessary action. 55 responses were received although not all of them addressed every single question; some simply acknowledged receipt of the consultation document without adding any further comments. Some made very general comments while others addressed each question in turn. The amendments in this instrument relate to the Species Protection aspect of the 2006 consultation and there is no further requirement to consult.

### **Financial Effects**

The instrument has no financial effects on the Scottish Government, local government, businesses or charities and therefore there is no requirement to undertake a Regulatory Impact Assessment.

Scottish Government Rural Directorate  
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