

EXECUTIVE NOTE

THE CONSERVATION (NATURAL HABITATS, &C.) AMENDMENT (SCOTLAND) REGULATIONS 2011

SSI 2011/155

The above instrument was made in exercise of the powers conferred by section 2(2) and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and section 26A of the Wildlife and Countryside Act 1981 (the 1981 Act). The instrument is subject to negative resolution procedure.

Policy Objectives

This instrument amends the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716) (“the 1994 Regulations”).

The 1994 Regulations deliver the protected areas and species requirements of Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”) and the protected areas requirements of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (“the Birds Directive”) in Scotland for the terrestrial and inshore areas.

The Birds Directive came into force in 1979 (as 79/409/EEC) and was codified in 2009. The Directive requires member states to enact a range of measures for the protection of wild birds and their habitats including a requirement to classify the most suitable territories in number and size as Special Protection Areas (SPAs) for the species mentioned in Annex 1 of the Directive (Article 4.1) and for regularly occurring migratory species (Article 4.2). SPAs together with Special Areas of Conservation (SACs) designated under the Habitats Directive form the pan-European network of nature protection sites known as Natura 2000.

The new instrument places a legislative requirement on Scottish Ministers to classify SPAs in the terrestrial and inshore environments. Since the Birds Directive first came into force in 1979, the UK government and Scottish Ministers (since devolution) have actively delivered this responsibility without a legislative requirement (153 SPAs have been classified in Scotland to date). In recent years, SPAs have been identified in accordance with agreed guidelines for the selection of SPAs which were published by the Joint Nature Conservation Committee in 1999.

The full transposition of the requirement to classify SPAs into domestic legislation will deliver consistency with existing provision for SPAs in the offshore marine environment, namely the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842), and ensure greater legal certainty.

The new instrument specifies that decisions by Ministers on SPAs may be made only on the basis of relevant scientific information (as is provided by case law of the European Court of Justice in case C-44/95) and on the basis of the criteria set out in Articles 4(1) and 4(2) of the Directive. The instrument also provides procedure for the proposal and consultation on SPA proposals, and for hearing and representations, and amends certain references to the Birds

Directive to account for its codification in 2009 and to make such references ambulatory (as has already been done for references in the 1994 Regulations to the Habitats Directive).

The new instrument also allows Scottish Ministers to delegate their species licensing functions to Scottish Natural Heritage (SNH). The delegation of species licensing functions was subject to public consultation in 2009. Provisions to allow delegation of species licensing functions contained in section 16 of the 1981 Act are included in the Wildlife and Natural Environment (Scotland) Bill. This instrument allows delegation of species licensing functions included in the 1994 Regulations. The instrument ensures that licensing for European protected species (the provisions in the Bill relate to species protected under domestic law) could also be delegated to SNH. This delegation would come into effect by written direction from Scottish Ministers to SNH.

Consultation

Consultation has not been undertaken in relation to the further transposition of the requirements of the EC Wild Birds Directive. This is considered to be a purely technical transposition matter with no practical consequence; the requirement to classify Special Protection Areas has been delivered to date by administrative means and there is no intention for the new provision to alter established practice in any way.

The possible transfer of species licensing functions to SNH was consulted upon and subject to an impact assessment as part of the Wildlife and Natural Environment (Scotland) Bill. This possible delegation has also been scrutinised by the Scottish Parliament in the course of that Bill.

Impact Assessments

No impact assessment has been undertaken for the reasons outlined above.

Financial Effects

No financial effects are anticipated for the provisions relating to SPAs. Any financial effects of the power to delegate licensing functions was considered in the Financial Memorandum accompanying the Wildlife and Natural Environment (Scotland) Bill. This Memorandum has been scrutinised by both the Finance Committee and Rural Affairs and Environment Committee.

Scottish Government

Rural and Environment Directorate

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