

EXECUTIVE NOTE

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (KEEPING AND RELEASE AND NOTIFICATION REQUIREMENTS) (SCOTLAND) ORDER 2012

SSI 2012/174

1. The above instrument is made in exercise of the powers conferred by section 14(1)(a)(ii), (2D)(a) and (e), 14ZC(1)(a) and (2)(a), and 14B(1)(a), (2)(a), (b), (d) and (f) and (4)(a) of the Wildlife and Countryside Act 1981 (1981 Act) and section 42(1) of the Wildlife and Natural Environment (Scotland) Act 2011 (2011 Act).

2. The instrument is subject to negative procedure.

Policy Objectives

3. This instrument forms part of an implementation package, to be laid before Parliament alongside other instruments made pursuant to the provisions relevant to the *Non-native species etc* part of the 2011 Act. Separate Executive Notes have been drafted for each instrument.

4. The 2011 Act repeals a number of provisions including –

- The Destructive Imported Animals Act 1932 (the 1932 Act) in Scotland (repealed by Part 2 of the Schedule to the 2011 Act)
- The Import of Live Fish (Scotland) Act 1978 (the 1978 Act) (repealed by Part 2 of the Schedule to the 2011 Act)
- Schedule 9 of the 1981 Act in Scotland (repealed by section 17(8) of the 2011 Act)

5. There were a number of Orders created under the 1932 Act and the 1978 Act imposing restrictions on the release, import and keeping of a number of species, and imposing a requirement for notification in some cases. The following instruments are revoked by article 5 and Schedule 2 to the Order subject to certain saving and transitional provisions made in the Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No.4, Saving and Transitional Provisions) Order 2012 (which is part of the implementation package laid alongside this Order):-

- The Prohibition of Keeping or Release of Live Fish (Specified Species) (Scotland) Order 2003
- The Coypu (Prohibition on Keeping) Order 1987
- The Coypu (Special Licence) (Fees) Regulations 1997
- The Grey Squirrels (Prohibition of Importation and Keeping) Order 1937
- The Mink (Keeping) Regulations 1975 (and the subsequent Mink (Keeping) (Amendment) Regulations 1977, 1979, 1982, 1987 and 1997)
- The Mink Keeping (Scotland) Order 2000
- The Mink Keeping (Scotland) Order 2003
- The Muntjac Keeping (Scotland) Regulations 2011
- The Muntjac Keeping (Scotland) Order 2011

- The Musk Rats (Prohibition of Importation and Keeping) Order 1933
- The Non-Indigenous Rabbits (Prohibition of Importation and Keeping) Order 1954

6. The Order maintains the necessary restrictions on keeping and release, and notification requirements, as the non-native provisions in the 2011 Act are commenced. These restrictions continue, for the most part, to be required as the species in question are an unacceptable risk to Scotland's biodiversity. The exception is the requirement to notify the authorities of the presence of Grey squirrels – this is not enforced and would currently be without benefit if it was. The Order also maintains the restriction that was in place in Schedule 9 to the 1981 Act to protect deer populations on certain islands.

7. The Order is made using powers inserted by the 2011 Act, into the 1981 Act, which allow the Scottish Ministers to specify, by Order

- invasive animals or plants that it is an offence to keep or possess (section 14ZC of the 1981 Act as inserted by section 14(3) of the 2011 Act);
- invasive non-native animals or plants the presence of which must be notified to a specified body (section 14B of the 1981 Act as inserted by section 14(5) of the 2011 Act); and
- native animals that it is an offence to release (section 14(1)(a)(ii) of the 1981 Act as substituted by section 14(2)(a) of the 2011 Act).

Mammals – keeping

8. The prohibition on keeping of certain mammals, in place at the time of commencement of the 2011 Act non-native species provisions, will be maintained by section 14ZC(1) of the 1981 Act together with article 3 and Part 2 of Schedule 1 to the Order. The prohibition on keeping of Mink, which had lapsed, will be reinstated.

9. The keeping of the following species will therefore be prohibited by section 14ZC(1) of the 1981 Act as read with the Order:

- Coypu
- Grey squirrel
- Mink
- Muntjac
- Muskrat
- Rabbits (except European rabbit)

Mammals – notification

10. The requirement to notify the authorities of the presence of certain mammals, in place at the time of commencement of the 2011 Act non-native species provisions, will be maintained insofar as the species listed below are concerned by article 4 and Part 3 of Schedule 1 to the Order. The requirement to notify the presence of Grey squirrels is not maintained for the reasons mentioned above. The obligation to notify continues to be imposed upon an occupier of land who is, or becomes aware of, the presence of an invasive

animal of a type specified in the Order and notification requires to be made to Scottish Natural Heritage (SNH) without delay.

11. The notification of the presence of the following species, to SNH, is required and any failure to notify is a criminal offence in terms of section 14B(5) of the 1981 Act:

- Coypu
- Muntjac
- Muskrat
- Rabbits (except European rabbit)

Mammals – release

12. Schedule 9 of the 1981 Act included a restriction on the release of Red Deer, and their hybrids, on the Outer Hebrides and the islands of Arran, Islay, Jura and Rum. This restriction was in place to protect the populations on what are termed *Red Deer refugia islands*; islands where the wild Red Deer populations are not at risk of hybridisation with non-native deer species, in particular Sika Deer. The risk associated with introducing hybrids animals, especially sika hybrids that can be difficult to identify without a genetic test, continues to be high. Section 14(1)(a)(ii) of the 1981 Act and article 2 and Part 1 of Schedule 1 to the Order therefore maintain the restriction on the release of any animals of the genus cervus on the Outer Hebrides and the islands of Arran (including Holy Island), Islay, Jura and Rum.

Fish and crayfish – keeping

13. The prohibition on keeping of certain fish, crayfish and their eggs, in place at the time of commencement of the 2011 Act non-native species provisions, will be maintained by article 3 and Part 2 of Schedule 1 to the Order. These species were listed as they had been judged to pose an unacceptable risk in Great Britain. That continues to be the position and therefore the Order maintains the restriction.

14. The keeping of the following species, and their eggs, will therefore be prohibited by this instrument:

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| • Asp | • Chinese black or snail-eating carp | • European mudminnow |
| • Barbel | • Chinese Sucker (also known as Zebra hi fin, banded shark/sucker) | • Fathead minnow (or Roseyreds) |
| • Bass (excluding sea bass, <i>Dicentrarchus labrax</i>) | • Coho salmon | • Freshwater minnow, Dragon fish or Pale chub |
| • Bighead carp | • Common white sucker | • Grass carp |
| • Blacknose Dace | • Crayfish | • Landlocked salmon |
| • Blageon | • Danubian bleak | • Marbled trout |
| • Blue bream | • Danubian salmon & Taimen | • Nase |
| • Blue sucker | • Eastern mudminnow | • Northern redbelly dace (common minnow) |
| • Burbot | • European bitterling | |
| • Catfish | | |
| • Charr | | |

- Pacific salmon and trout
- Paddlefish
- Perch
- Pike
- Pikeperch
- Red shiner
- Ruffe
- Schneider
- Silver carp
- Snakehead
- Southern Redbelly Dace (common minnow)
- Sturgeon or sterlet
- Sunbleak (Sundace), also known as Belica or Motherless minnow
- Sunfish, including pumpkinseed (also Basses, Crapies & Bluegills)
- Topmouth gudgeon
- Toxostome (or French nase)
- Vimba
- Weatherfish
- Whitefish

Consultation

15. In exercising their powers under sections 14(1)(a)(ii), (2D)(a) and (e) (release), and 14ZC(1)(a) and (2)(a) (keeping) Ministers are required to consult SNH, and any other person appearing to them to have an interest in accordance with section 26(4A) of the 1981 Act (as inserted by section 17(6)(c) of the 2011 Act).

16. In making this instrument Ministers have consulted with SNH. No others persons were judged to have an interest as the instrument merely maintains the status quo.

Equalities Impact Assessments

17. There are no equalities impact issues.

Financial Effects

18. A Regulatory Impact Assessment was included in the consultation for the 2011 Act. The restrictions and requirements in this Order are maintaining the status quo (following repeals) therefore there are no financial effects anticipated.

Directorate for Environment and Forestry
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