

POLICY NOTE

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (KEEPING AND RELEASE AND NOTIFICATION REQUIREMENTS) (SCOTLAND) AMENDMENT ORDER 2019

SSI 2019/37

AND

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (PROHIBITION ON SALE ETC. OF INVASIVE ANIMAL AND PLANT SPECIES) (SCOTLAND) ORDER 2019

SSI 2019/38

The Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Amendment Order 2019 (“the Keeping Order”) was made in exercise of the powers under section 14ZC(1) and (2)(a) of the Wildlife and Countryside Act 1981 (“the 1981 Act”). The Wildlife and Countryside Act 1981 (Prohibition on Sale etc. of Invasive Animal and Plant Species) (Scotland) Order 2019 (“the Sale Order”) was made in exercise of the powers under section 14A(1) and (3)(a) of the Wildlife and Countryside Act 1981. Both instruments are subject to the negative procedure.

The EU Regulation 1143/2014 on the prevention and management of the introduction and spread of invasive alien species (“the EU Regulation”) came into force on 1 January 2015 and has direct effect. The EU Regulation restricts certain activities in relation to forty-nine invasive alien species of concern in the European Union, this includes restrictions on keeping and sale. The purpose of the Keeping Order and the Sale Order is to ensure that there are penalties for contravention of the restrictions on keeping and sale by extending criminal penalties under the 1981 Act to apply to species that are both subject to the EU Regulation and considered invasive in Scotland.

Policy Objectives

The intention is to ensure that there are penalties in Scotland for contravention of the restrictions on the keeping and sale of invasive alien species as is required in order to partially implement the EU Regulation. The Keeping Order updates the list of species that it is an offence to keep under section 14ZC of the 1981 Act and the Sale Order creates a new list of species that it would be an offence to offer for sale under section 14A of the 1981 Act.

These instruments will partially implement the EU Regulation on Invasive Alien Species. There are some remaining elements which will be implemented at a later date. The remaining elements referred to relate to:

- Ensuring that there are penalties in place for the contravention of the prohibitions on the keeping and sale of thirteen of species of Union concern, which cannot be subject to the existing offences under the 1981 Act as they are not considered invasive in Scotland;

- Ensuring that there are penalties for the contravention of other restrictions under Article 7 of the EU Regulation. Those restrictions relate to breeding, transporting, using and permitting to reproduce, growing or cultivating invasive alien species
- Setting out statutory purposes and conditions for the permitting regime specified in Article 8 the EU Regulation.

Articles 31 and 32 of the EU Regulation provide transitional arrangements for pet owners and commercial owners by allowing an animal to be kept in specific and limited circumstances. The existing licensing powers under the 1981 Act will be used to give effect to the transitional arrangements and the permitting regime specified by the EU Regulation. For example, where keeping is in accordance with a licence, the offence under section 14ZC does not apply.

Consultation

To comply with the requirements with section 26(4A) of the Wildlife and Countryside Act 1981, Scottish Natural Heritage were consulted and were in agreement with the approach taken. There were no other known persons who were deemed necessary to consult with. Regular discussions have also been held with policy officials from the UK Government and the other devolved administrations to coordinate the development of these SSIs and a separate statutory instrument covering the rest of the United Kingdom.

Impact Assessments

Full Impact Assessments have not been prepared for this instrument because the Orders relate to maintenance of existing regulatory standards. The amendments do not alter Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment.

Financial Effects

A Partial Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is likely to be minimal.

Scottish Government
Natural Resources Directorate

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