
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 113

The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019

PART 2

**AMENDMENT OF THE CONSERVATION
(NATURAL HABITATS, &C.) REGULATIONS 1994**

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

3. The Conservation (Natural Habitats, &c.) Regulations 1994(1) are amended in accordance with regulations 4 to 26.

Amendment of regulation 2

4.—(1) Regulation 2 (interpretation and application) is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “competent authority”, insert—

““conservation” has the meaning given by Article 1(a) of the Habitats Directive;
“conservation status” and “favourable conservation status” have the meanings given by paragraphs (e) (in relation to habitats) and (i) (in relation to species) of Article 1 of the Habitats Directive;”;

(b) in the definition of “Habitats Directive”, after “time to time” insert “, but subject to paragraph (2A)(2)”,

(c) in the definition of “Natura 2000”, at the end insert “(but see paragraphs (6) and (7))”,

(d) after the definition of “premises”, insert—

““priority natural habitat types” has the meaning given by Article 1(d) of the Habitats Directive;
“priority species” has the meaning given by Article 1(h) of the Habitats Directive;”;

(e) after the definition of “relevant authorities”, insert—

““the requirements of the Directives” is to be interpreted in accordance with regulation 2A(3) and (4);

“the retained transposing regulations” means—

(a) the Conservation of Habitats and Species Regulations 2017(3);

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- (1) [S.I. 1994/2716](#). Relevant amendments are made by [S.I. 1997/3055](#), [2007/1843](#) and [2010/490](#), and by [S.S.I. 2004/475](#), [2007/80](#), [2011/155](#) and [2012/228](#).
- (2) The effect of paragraph 2 of Schedule 8 to the European Union (Withdrawal) Act 2018 is that the reference to the Habitats Directive as amended “from time to time” ceases to have ambulatory effect on exit day and is thereafter to be read as a reference to that Directive as it had effect immediately before exit day.
- (3) [S.I. 2017/1012](#).

- (b) the Conservation of Offshore Marine Habitats and Species Regulations 2017 (4);
- (c) the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(5); and
- (d) these Regulations,
“the other retained transposing regulations” means the retained transposing regulations other than these Regulations;”;
- (f) after the definition of “sample”, insert—
““site” has the meaning given by Article 1(j) of the Habitats Directive;
“site of Community importance” has the meaning given by Article 1(k) of the Habitats Directive;
“special area of conservation” has the meaning given by Article 1(l) of the Habitats Directive and includes any such site designated after exit day under the retained transposing regulations;”;
- (g) after the definition of “statutory undertaker”, insert—
““the UK site network” means the network of sites in the United Kingdom’s territory consisting of such sites as—
(a) immediately before exit day formed part of Natura 2000; or
(b) at any time on or after exit day are European sites, European marine sites and European offshore marine sites for the purposes of any of the retained transposing regulations;
“the United Kingdom’s territory” means the United Kingdom and the offshore marine area;”, and
- (h) in the definition of “the Wild Birds Directive”, after “time to time” insert “, but subject to paragraph (2A)(6)”.
- (3) For paragraph (2) substitute—
“(2) Unless the context otherwise requires, expressions not defined in paragraph (1) which are used in these Regulations and also in the Habitats Directive have the same meaning as in that Directive.”.
- (4) In paragraph (2ZA), after “expressions” insert “not defined in paragraph (1) which are”.
- (5) After paragraph (2ZA) insert—
“(2A) In these Regulations references to any Annex to the Habitats Directive or, as the case may be, any Annex to the Wild Birds Directive, are references to that Annex as it had effect immediately before exit day, or as subsequently amended under regulation 114.”.
- (6) After paragraph (5), insert—
“(6) For the purposes of—
(a) these Regulations; and
(b) any guidance issued before exit day by the Scottish Ministers or the appropriate nature conservation body relating to the application of these Regulations,

(4) S.I. 2017/1013.

(5) S.R.(N.I.) 1995 No. 380. Amendments have been made by the Marine Act (Northern Ireland) 2013 (c.10) (N.I.), section 40, by S.R. 2004 No. 435, 2007 No. 345, 2009 No. 8, 2011 No. 216, 2012 No. 368 and 2015 No. 182.

(6) The effect of paragraph 2 of Schedule 8 to the European Union (Withdrawal) Act 2018 is that the reference to the Wild Birds Directive as amended “from time to time” ceases to have ambulatory effect on exit day and is thereafter to be read as a reference to that Directive as it had effect immediately before exit day.

on or after exit day references to “Natura 2000” (other than in this regulation) are to be construed as references to the UK site network.

(7) Paragraph (6) does not affect the interpretation of these Regulations as they had effect, or any guidance as it applied, before exit day.”.

Insertion of new regulation 2A

5. After regulation 2, insert—

“Interpretation: the Directives

2A.—(1) The Habitats Directive is to be construed for the purposes of these Regulations as if—

- (a) any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom;
- (b) any reference to “Member State” or “Member States” included a reference to the United Kingdom;
- (c) any reference to “of Community interest” included, in relation to the United Kingdom, a reference to “of national interest”;
- (d) in Article 1(d) and (h), references to “the Community” were references to “the European Union or the United Kingdom”; and
- (e) in Article 1(l), the reference to “a site of Community importance designated by the Member States” included, in relation to the United Kingdom, a reference to a site of national importance designated under any of the retained transposing regulations.

(2) The Wild Birds Directive is to be construed for the purposes of these Regulations as if—

- (a) any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom; and
- (b) any reference to “Member State” or “Member States” included a reference to the United Kingdom.

(3) Any reference in these Regulations to “the requirements of the Directives” is to be construed as if the objectives of the Directives included the objectives referred to in regulation 9D(2).

(4) The Scottish Ministers may, after consultation with the appropriate nature conservation body and such other bodies or persons as they consider appropriate, issue guidance as to the interpretation of the requirements of the Directives.

(5) Any guidance issued under paragraph (4) must be published by the Scottish Ministers in such manner as they consider appropriate.”.

Amendment of regulation 3

6. In regulation 3 (duties relating to compliance with the Directives), after paragraph (3) insert—

“(4) In complying with their duties under paragraphs (1) and (3), the Scottish Ministers, the appropriate nature conservation body and a competent authority must have regard to any guidance issued under regulation 2A(4).”.

Insertion of new regulation 3ZA

7. After regulation 3, insert—

“Reports

3ZA.—(1) Within six years from exit day, and at least every six years thereafter, the Scottish Ministers must publish, in such form as they see fit, a report on the implementation of the measures taken for the purpose of giving effect to the provisions of the Directives, and the achievement of the objectives set out in Article 2 of the Habitats Directive and Articles 2 and 3 of the Wild Birds Directive.

(2) The report under paragraph (1) must include in particular—

- (a) information concerning conservation measures taken under Article 6(1) of the Habitats Directive;
- (b) information on provisions mentioned in Article 12 of the Wild Birds Directive;
- (c) an evaluation of the impact of those conservation measures on the conservation status of—
 - (i) the natural habitat types listed in Annex I of the Habitats Directive, and
 - (ii) the species listed in Annex II of that Directive; and
- (d) the main results of the surveillance and monitoring undertaken under regulations 37A and 41A.”.

Amendment of regulations 7 and 8

8. For regulation 7 (selection of sites eligible for identification as of Community importance) and 8 (adoption of list of sites: designation of special areas of conservation), substitute—

“Duty to designate special areas of conservation

7.—(1) The Scottish Ministers must, having regard to the priorities established under regulation 8, designate as special areas of conservation such sites in Scotland as they consider to be of national importance.

(2) Sites of national importance are sites which contribute significantly to the objective in paragraph (3)(a) or the objective in paragraph (3)(b).

(3) The objectives referred to in paragraph (2) are—

- (a) the maintenance, or restoration, at favourable conservation status in their natural range of the natural habitat types listed in Annex I to the Habitats Directive or the species listed in Annex II to that Directive; and
- (b) the maintenance of biological diversity within the Atlantic biogeographic region.

(4) For animal species which range over wide areas, those sites determined to be of national importance must correspond to places within the natural range of such species, which is distinct in providing the physical or biological factors essential to their life and reproduction.

(5) For aquatic species which range over wide areas, such sites are to be determined to be of national importance only where there is a clearly identifiable area which is distinct in providing the physical and biological factors essential to their life and reproduction.

(6) In determining which sites are of national importance for the purposes of paragraph (1), the Scottish Ministers must—

- (a) apply the Annex III criteria;

- (b) make their determination only on the basis of relevant scientific information; and
 - (c) have regard to the importance of the population of a species or area of a habitat found in the United Kingdom for the purpose of meeting the objectives in paragraph (3).
- (7) For the purposes of paragraph (6)(a), the Annex III criteria are to be construed as if—
- (a) for “Community importance” there were substituted “national importance”;
 - (b) a reference to a “Member State” is to be taken to be a reference to the Scottish Ministers;
 - (c) for “continuous ecosystem situated on both sides of one or more internal Community frontiers” there were substituted “continuous ecosystem extending beyond the borders of the United Kingdom”; and
 - (d) for “the biogeographical regions concerned and/or for the whole of the territory referred to in Article 2” there were substituted “the Atlantic biogeographical region”;
- (8) In applying the Annex III criteria, the Scottish Ministers must—
- (a) in relation to the application of stage 1 of those criteria, have regard to the advice of the appropriate nature conservation body; and
 - (b) in relation to the application of stage 2 of those criteria, have regard to the advice of the Joint Nature Conservation Committee.
- (9) In this regulation, “the Annex III criteria” means the criteria set out in Annex III to the Habitats Directive.

Priorities for designating special areas of conservation

8.—(1) The Scottish Ministers must, in accordance with paragraph (2), establish priorities for designating as special areas of conservation such sites as they have determined to be sites of national importance.

- (2) Priorities for the purpose of paragraph (1) must be established in the light of—
- (a) the importance of the sites for the maintenance at, or restoration to, a favourable conservation status of—
 - (i) a natural habitat type specified in Annex I to the Habitats Directive; or
 - (ii) a species specified in Annex II to the Habitats Directive;
 - (b) the importance of such sites for the coherence of the UK site network; and
 - (c) the threats of degradation or destruction to which the sites are exposed.”.

Omission of regulation 9

- 9.** Omit regulation 9 (consultation as to inclusion of site omitted from the list).

Amendment of regulation 9A

10.—(1) Regulation 9A (special protection areas: classification of sites) is amended as follows.

(2) Omit sub-paragraph (4)(a).

(3) After paragraph (4), insert—

“(5) In applying the criteria referred to in paragraphs (3)(a) and (b) in relation to any species, references in Articles 4(1) and 4(2) of the Wild Birds Directive to classifying the most suitable territories “in the geographical sea and land area where this Directive applies”

are to be construed as referring to the most suitable territories in the United Kingdom's territory, having regard to the importance of such territories for ensuring the survival and reproduction of that species in their area of distribution.”.

Insertion of new regulation 9D

11. After regulation 9C (special protection area: hearing and representation in respect of a proposal), insert—

“Management objectives of the UK site network

9D.—(1) The Scottish Ministers must, in co-operation with any other authority having a corresponding responsibility, manage, and where necessary adapt, the UK site network, so far as it consists of European sites in Scotland, with a view to contributing to the achievement of the management objectives of the UK site network.

(2) The management objectives of the UK site network are—

- (a) to maintain at or, where appropriate, restore to a favourable conservation status in their natural range (so far as it lies in the United Kingdom's territory, and so far as is proportionate)—
 - (i) the natural habitat types listed in Annex I to the Habitats Directive; and
 - (ii) the species listed in Annex II to that Directive whose natural range includes any part of the United Kingdom's territory; and
- (b) to contribute, in their area of distribution, to ensuring the survival and reproduction, and securing compliance with the requirements of Article 2 of the Wild Birds Directive for the purposes of the duty in regulation 3(1), of—
 - (i) species of birds listed in Annex I to the Wild Birds Directive which naturally occur in the United Kingdom's territory; and
 - (ii) regularly occurring migratory species of birds not listed in that Annex which naturally occur in the United Kingdom's territory.

(3) In complying with the obligation in paragraph (1), the Scottish Ministers must have regard —

- (a) in relation to any European site which is not of a kind mentioned in regulation 10(1)(d), to the considerations mentioned in paragraph (4); and
- (b) in relation to European sites of a kind mentioned in regulation 10(1)(d), to the considerations mentioned in paragraph (5).

(4) The considerations referred to in paragraph (3)(a) are—

- (a) the importance of the sites for the maintenance at, or restoration to, a favourable conservation status, throughout their natural range, of the natural habitat types and species mentioned in paragraph (2)(a);
- (b) the importance of the sites for the coherence of the UK site network; and
- (c) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.

(5) The considerations referred to in paragraph (3)(b) are—

- (a) the importance of the sites for ensuring the survival and reproduction of, and securing compliance with the requirements of Article 2 of the Wild Birds Directive for the purposes of the duty in regulation 3(1) in relation to, the species of birds mentioned in paragraph (2)(b), in their area of distribution;

- (b) in the case of migratory species, the importance of their breeding, moulting and wintering areas and staging points along their migration routes;
 - (c) the importance of the sites for the coherence of UK site network; and
 - (d) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.
- (6) In paragraph (2)(a), “proportionate” means proportionate to the relative importance of—
- (a) the part of the natural range lying in the United Kingdom’s territory; and
 - (b) the part of the natural range lying outside the United Kingdom’s territory,
- for achieving a favourable conservation status.”.

Amendment of regulation 10

12.—(1) Regulation 10 (meaning of “European site” in the Conservation (Natural Habitats, &c.) Regulations 1994) is amended as follows.

- (2) In paragraph (1)—
- (a) in sub-paragraph (b), at the end insert “before exit day”,
 - (b) omit sub-paragraph (c),
 - (c) in sub-paragraph (d)—
 - (i) after “classified”, insert “before exit day”, and
 - (ii) after “Wild Birds Directive”, insert “or classified after exit day under the retained transposing regulations”, and
 - (d) for sub-paragraph (e), substitute—
 - “(e) a site which before exit day has been proposed to the European Commission in accordance with Article 4(1) of the Habitats Directive until such time as—
 - (i) the site is designated as a special area of conservation under regulation 7 or under the equivalent provision in the other retained transposing regulations; or
 - (ii) the Scottish Ministers give notice of their intention not to designate the site, setting out the reasons for their decision, in accordance with regulation 112(3).”.
- (3) Omit paragraph (2).

Amendment of regulation 11

13.—(1) Regulation 11 (duty to compile and maintain register of European sites) is amended as follows.

- (2) In paragraph (2)—
- (a) in sub-paragraph (b), for “as soon as they are” substitute “which before exit day were”,
 - (b) omit sub-paragraph (c), and
 - (c) for sub-paragraph (e), substitute—
 - “(e) any site in Scotland which before exit day has been proposed to the European Commission in accordance with Article 4(1) of the Habitats Directive until such time as regulation 10(1)(e)(i) or (ii) applies.”.
- (3) For paragraph (4)(a), substitute—

- “(a) relating to a site which is no longer a European site; or”.

Amendment of regulation 20

14.—(1) Regulation 20 (chapter 2 of part 2 of the Nature Conservation (Scotland) Act 2004) is amended as follows.

(2) In paragraph (a)—

(a) for sub-paragraph (i) substitute—

“(i) in subsection (2)(a) for “special interest,” there were substituted “significance in relation to the requirements of the Directives (within the meaning of regulation 2(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716)),””,

(b) for sub-paragraph (ii) substitute—

“(ii) in subsection (2)(b), after “an international obligation” there were inserted “and the requirements of the Directives (within the meaning of regulation 2(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716))””, and

(c) in sub-paragraph (iii), for “objectives of the Directives referred to in subsection (2)(a)” substitute “requirements of the Directives (within the meaning of regulation 2(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716))”.

Amendment of regulation 37A

15.—(1) Regulation 37A (surveillance of conservation status of habitats and species) is amended as follows.

(2) In paragraph (1), for “Community”, in both places where it occurs, substitute “national”.

(3) After paragraph (8), insert—

“(9) In this regulation—

“natural habitats of national interest” means natural habitat types listed in Annex I to the Habitats Directive;

“species of national interest” means species of wild fauna and flora listed in Annex II, IV or V to the Habitats Directive.”.

Amendment of regulation 39

16. In regulation 39 (protection of certain wild animals), paragraph (8), before sub-paragraph (a), insert—

“(aa) it was taken from the wild in the United Kingdom, without contravention of the law and before 10th June 1994;”.

Amendment of regulation 41

17.—(1) Regulation 41 (prohibition of certain methods of taking or killing wild animals) is amended as follows.

(2) In paragraph (2), for sub-paragraphs (a) and (b), substitute—

“(a) any means listed in paragraphs 1 or 2 of Schedule 3A;

(b) any form of taking or killing from the modes of transport listed in paragraph 3 of Schedule 3A; or”.

(3) Omit paragraphs (3) to (5).

Amendment of regulation 43

18. In regulation 43 (protection of certain wild plants), paragraph (7), before sub-paragraph (a), insert—

“(aa) it was taken from the wild in the United Kingdom, without contravention of the law and before 10th June 1994;”.

Amendment of regulation 45

19. In regulation 45 (licences: supplementary provisions), after paragraph (6), insert—

“(7) Within two years from exit day, and thereafter within two years of the publication of the last such report, the Scottish Ministers must publish, in such form as they see fit, a report on licences granted under regulation 44 in the preceding two years.

(8) The reports made under paragraph (7) must specify—

- (a) the species which are subject to the licence and the reason for granting it, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;
- (b) in relation to any animal species, any means authorised for the capture or killing of the species and the reasons for the use of that means;
- (c) when and where the licence was granted; and
- (d) the supervisory measures taken to check that the required conditions of the licence have been complied with, any monitoring that has been carried out of compliance with the conditions of the licence, and the results of that monitoring.”.

Amendment of regulation 48

20. In regulation 48 (assessment of implications for European site), omit paragraph (7).

Amendment of regulation 49 (Consideration of overriding public interest)

21.—(1) Regulation 49 (considerations of overriding public interest) is amended as follows.

(2) In paragraph (2)(b), for “European Commission” substitute “Scottish Ministers”.

(3) In paragraph (3), for the words from “the opinion” to “Secretary of State” substitute “, for the purposes of paragraph (2)(b), the opinion of the Scottish Ministers as to whether reasons are to be considered imperative reasons of overriding public interest, they must submit a written request to the Scottish Ministers”.

(4) For paragraph (4) substitute—

“(4) In giving, for the purposes of paragraph (2)(b), their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must have regard to the national interest, and provide their opinion to the competent authority.”.

(5) After paragraph (4), insert—

“(4A) Before giving, for the purposes of paragraph (2)(b), their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) the Secretary of State;
- (c) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

- (d) the Welsh Ministers; and
- (e) any other person the Scottish Ministers consider appropriate.”.

Amendment of regulation 85B (Assessment of implications for European site)

22. In regulation 85B (assessment of implications for European site), omit paragraph (6).

Amendment of regulation 85C

23.—(1) Regulation 85C (considerations of overriding public interest) is amended as follows.

(2) In paragraphs (2)(b) and (3), for “European Commission” substitute “Scottish Ministers”.

(3) For paragraph (4) substitute—

“(4) In giving their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must have regard to the national interest, and provide their opinion to the plan-making authority.”.

(4) After paragraph (4), insert—

“(4A) Before giving their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) the Secretary of State;
- (c) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
- (d) the Welsh Ministers; and
- (e) any other person the Scottish Ministers consider appropriate.”.

Amendment of regulation 111

24. In regulation 111 (research), omit paragraph (2).

Insertion of new regulations 112 to 115

25. After regulation 111, insert—

“Transitional provisions: EU exit

112.—(1) Where before exit day a site in Scotland has been adopted in accordance with the procedure set out in Article 4(2) of the Habitats Directive (list of sites of Community importance), the Scottish Ministers must designate that site as a special area of conservation as soon as possible and no later than six years from the date of adoption of that site.

(2) Paragraph (3) applies where a site in Scotland—

- (a) has before exit day been proposed, in a list of sites transmitted to the European Commission, as eligible for identification as of Community importance in accordance with the procedure laid out in Article 4(2) of the Habitats Directive (list of sites of Community importance); and
- (b) has not yet been so identified as being of Community importance.

(3) Where this paragraph applies, the Scottish Ministers must within six years of exit day designate the site as a special area of conservation or give notice of their intention not

to designate the site as such and in that case must publish, in such form as they see fit, their reasons for not designating it.

Amendment of Schedules

113.—(1) The Scottish Ministers may by regulations amend schedule 2 or 4 for the purpose of adding, to schedule 2 or 4, any species listed in Annex IV(a) or (b) to the Habitats Directive, where they are satisfied that the natural range of that species includes any area in Scotland.

(2) The Scottish Ministers may by regulations make such other amendments as they consider necessary for adapting schedules 2 to 4 to technical and scientific progress.

(3) Regulation 115 applies in relation to any amendment made under paragraph (1) or (2).

Amendment of the Annexes to the Directives

114.—(1) Paragraph (2) applies for the purposes of the application of the Annexes so far as they are relevant to any reference in these Regulations to—

- (a) the Directives;
- (b) the Annexes; or
- (c) any provisions of the Directives to which the Annexes relate.

(2) The Scottish Ministers may by regulations make such amendments to the Annexes as they consider necessary for the purpose of adapting them to technical and scientific progress.

(3) Regulation 115 applies in relation to any amendment made under paragraph (2).

(4) In this regulation, “the Annexes” means—

- (a) Annexes I to IV to the Habitats Directive; and
- (b) Annexes I to V to the Wild Birds Directive.

Regulations

115.—(1) Regulations made under regulation 113(2) amending schedule 2, or under regulation 114 amending Annex IV to the Habitats Directive, are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

(2) Regulations made in any other case are subject to the negative procedure.”

Insertion of new Schedule 3A

26. After schedule 3 (animals which may not be taken or killed in certain ways) insert schedule 3A, as set out in the schedule to these Regulations.