
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, make further provision for the transposition of Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”) (O.J. No. L 206, 22.7.1992, p.7). In so doing they amend the Conservation of Seals Act 1970, the Wildlife and Countryside Act 1981, the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”) and the Spring Traps Approval (Scotland) Order 1996. Regulation 2 provides that these Regulations come into force on the day after the day they are made.

Regulations 4 to 25 amend the 1994 Regulations as follows.

Regulation 6 adds further enactments to the list specified in respect of functions relevant to the marine environment which must be exercised so as to secure compliance with the Habitats Directive.

Regulation 7 provides that National Park authorities are relevant authorities in relation to marine areas and European marine sites.

Regulation 8 extends the meaning of “European site” to include all sites in Great Britain proposed under regulation 7(1) of the 1994 Regulations.

Regulation 9 inserts new regulation 37A which provides for surveillance of the conservation status of natural habitat types and species of Community interest. It also provides for the making of arrangements to ensure that the taking of certain species is compatible with their maintenance at favourable conservation status in certain circumstances.

Regulation 10 substitutes regulation 39 which extends the protection of certain wild animals. The additional measures are as follows—

- (a) it is an offence to deliberately or recklessly injure, or to harass a wild animal of a European protected species;
- (b) the circumstances in which disturbance of such an animal is an offence are extended;
- (c) the offences of sale or exchange or offering for sale or exchange certain animals or products derived from them is extended to all protected species listed in Annex IV(a) of the Directive;
- (d) the offences of possession, control or transport are similarly extended with effect from 1st May 2007;
- (e) a defence is provided in respect of species which are not native to Great Britain and which were taken in the wild where that was both lawful in, and (where the Habitats Directive applies) prior to the application of the Directive to, the place from which the animal was taken;
- (f) a specific defence is provided in relation to certain species in certain areas or which are not naturally occurring populations.

Regulation 11 substitutes regulation 40 which restricts additional defences available in relation to regulation 39 to mercy killing, tending of injured animals and acts carried out in relation to animals bred and lawfully held in captivity.

Regulation 12 amends regulation 41 to provide that it is an offence to use any indiscriminate means of taking or killing certain animals where that could cause certain effects.

Regulation 13 inserts new regulation 41A which provides for the Scottish Ministers to make arrangements for monitoring incidental capture and killing of certain animals, and for the carrying out of research and other conservation measures.

Regulation 14 substitutes regulation 43 which extends the protection of certain wild plants. Offences under this regulation now extend to all protected species listed in Annex IV(b) of the Habitats Directive (other than bryophytes). A new defence is provided in respect of species not native to Great Britain which were taken in the wild where that was both lawful in, and (where the Habitats Directive applies) prior to the application of the Habitats Directive to, the place from which the plant was taken.

Regulation 15 provides a new power to grant licences under regulation 44 of the 1994 Regulations for the taking or possession or control of animals or plants of a European protected species. Regulation 16 makes ancillary provision in relation to the conditions to be imposed in respect of such licences. Regulation 17 creates a new offence of breaching a condition imposed in respect of any licence granted on or after 15th May 2007.

Regulation 18 amends regulation 48(2) of the 1994 Regulations to supplement the requirement to provide information to competent authorities under that regulation.

Regulation 19 amends regulation 49(2)(b) of the 1994 Regulations to provide that decisions under that provision that there are imperative reasons of overriding public interest justifying a plan or project are only to be taken after having had regard to the opinion of the European Commission.

Regulation 20 inserts new regulation 84B which provides that the grant or variation of authorisations under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“the 2005 Regulations”) are subject to regulations 48-53 of the 1994 Regulations (requirement to consider effect on European site). Regulation 21 makes an amendment consequential upon the replacement of the consent regime under Part II of the Control of Pollution Act 1974 by the 2005 Regulations.

Regulation 22 inserts a new Part IVA (appropriate assessments for land use plans) into the 1994 Regulations, containing regulations 85A to 85E. Regulation 85A provides for interpretation of this new Part.

Regulation 85B provides that where a land-use plan is likely to have a significant effect on a European site in Great Britain which is not directly connected with or necessary to the management of the site, the plan-making authority must conduct an appropriate assessment of the implications for the site in view of that site’s conservation objectives, and undertake any necessary consultation.

The plan-making authority is to give effect to the plan only after having ascertained that it will not adversely affect the integrity of the site (regulation 85B(4)), unless it is satisfied that there are no alternative solutions and there are imperative reasons of overriding public interest as set out in regulation 85C. Where a planning authority proposes to give effect to a plan notwithstanding a negative assessment, it must notify the Scottish Ministers (regulation 85C(5)). The subsequent procedure is set out regulation 85C(6) and (7).

Regulation 85D is applicable where two or more planning authorities prepare a joint structure plan under section 5 or joint local plan under section 11 of the Town and Country Planning (Scotland) Act 1997.

In the event of a plan being given effect despite a negative assessment for reasons of overriding public interest, regulation 85E requires that any necessary compensatory measures are to be taken to ensure that the overall coherence of Natura 2000 is protected.

Regulation 24 inserts new regulation 104A, which makes specific provision for the application of the 1994 Regulations, to the Crown.

Regulation 26 amends the Conservation of Seals Act 1970 to indicate that there are restrictions under the Habitats Directive on methods of killing or taking seals, in addition to those contained in that Act.

Regulations 28 and 29 amend Schedules 5 and 8 to the Wildlife and Countryside Act 1981 to remove European protected species from the protection provided by sections 9 and 13 of that Act.

Regulation 31 makes savings provisions in respect of the offences under regulations 39 and 43 of the 1994 Regulations as they stood prior to that amendment by these Regulations of keeping or transporting wild animals or plants of a European protected species for the period up to and including 30th April 2007.

A Regulatory Impact Assessment has been prepared and placed in the library of the Scottish Parliament. A copy can be obtained from the Landscape and Habitats Division, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, Edinburgh, EH6 6QQ.