
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 fauna and flora (O.J. No. L 206, 22.7.1992, p.7) (“the Habitats Directive”). In doing so they amend the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”).

Regulation 3 amends regulation 37A (surveillance of conservation status of habitats and species) of the 1994 Regulations by adding new paragraphs (5) to (8). These new provisions require the arrangements made by the Scottish Ministers under that regulation to ensure that Scottish Natural Heritage (“SNH”) implements a surveillance strategy in respect of the habitats and species to which regulation 37A applies, and set out requirements which must be met in implementing that strategy. Paragraph (7) provides that surveillance may be carried out by SNH or by another body or person pursuant to an agreement with SNH.

Regulation 4 amends regulation 39 (protection of certain wild animals) to provide that, in addition to the offences which regulation 39(1)(b) currently provides for, it is an offence deliberately or recklessly to disturb a wild animal or a group of wild animals of a European protected species while it is migrating or hibernating.

Regulation 5 amends regulation 40 (exceptions to regulation 39) by adding a new paragraph (4), which provides that the exceptions to regulation 39 created by regulation 40(1) and (2) (mercy killing and tending of certain injured animals) shall not apply where it is shown that there was a satisfactory alternative to what was done or that what was done was detrimental to the maintenance of the populations of the species concerned.

Regulation 6 substitutes a new regulation 41A (monitoring incidental capture or killing). The new regulation provides that SNH must make arrangements in accordance with the requirements of that regulation for monitoring the incidental capture or killing of animals of the species listed in Annex IV(a) to the Habitats Directive. Paragraph (3) requires SNH, in the light of information gathered from the monitoring system, to arrange the carrying out of such research or (if appropriate) advise the Scottish Ministers on such conservation measures as seems or seem necessary to ensure there is not a significant negative impact on the species in question.

Paragraph (4) of new regulation 41A sets out requirements which must be met in implementing the monitoring system, and paragraph (5) provides that the monitoring may be carried out by SNH or by any other body or person either pursuant to an agreement with SNH or as a condition of a licence or other authorisation granted by a competent authority.