

POLICY NOTE

THE CONSERVATION (NATURAL HABITATS, &C.) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2019

SSI 2019/364

The Conservation (Natural Habitats, &c.) (Miscellaneous Amendments) (Scotland) Regulations 2019 was made in exercise of the powers conferred by section 2(2) and paragraph 1A of schedule 2 of the European Communities Act 1972.

The instrument is subject to the affirmative procedure. It is considered appropriate that these Regulations are subject to affirmative procedure on the basis that they amend primary legislation and create a criminal offence.

Purpose of the instrument: The Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species (“the EU Regulation”) came into force on 1 January 2015. The EU Regulation restricts certain activities in relation to forty-nine invasive alien species of concern in the European Union. Scottish Ministers have used their existing powers under Wildlife and Countryside Act 1981 (“the 1981 Act”) to restrict the keeping and sale of those species that are both subject to the EU Regulation and considered invasive in Scotland. The purpose of the Regulations is primarily to create a new offence and criminal penalties for contravention of the restrictions under the EU Regulation, for those restricted activities and species of Union concern which are not covered by the existing offences under the 1981 Act. The Regulations transposes defences and licensing requirements from the EU Regulation into the 1981 Act.

In the Scottish Government’s view, the resources required to produce a transposition note are significantly greater than can be justified by the resulting added benefit to the reader.

Policy Objectives

This instrument further implements the EU Regulation on invasive alien species. There are four objectives of this instrument:

- Ensure that there are offences and 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 (further implementing Article 7(1)(b) and (e) and Article 30 of the EU Regulations).
- Ensure that there are offences and 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 (further implementing Article 7(1)(c), (d), and (f) to (h) and Article 30 of the EU Regulation).

- Make provision for statutory defences for owners of companion animals and commercial stock as described in Articles 31 and 32 of the EU Regulation.
- Set out arrangements for licensing certain restricted activities allowed under the circumstances specified in Articles 8, 9, 17, 19 and 31 of the EU Regulation.

These Regulations include an ambulatory reference to the list of invasive alien species of Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of the EU Regulation. The Scottish Government intends to publicise any update to that list by issuing a revised code of practice under section 14C of the 1981 Act (as amended by regulation 2(3) of these Regulations). The information which may be included in a code of practice includes which species, sub-species or lower taxon of animal, plant, fungus or micro-organism are considered to be invasive alien species.

Regulation 3 of these Regulations amends the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”) to correct an error in fulfilment of a commitment given to the Scottish Parliament during its consideration of the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (“the 2012 Regulations”). It corrects a cross-reference in regulation 3A of the 1994 Regulations, inserted by the 2012 Regulations.

Consultation

Scottish Natural Heritage was consulted and was in agreement with the approach taken. Regular discussions have also been held with policy officials from the UK Government and the other devolved administrations to coordinate the development of 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 Regulations 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.

Equalities impact assessment

There are no equality impact issues.

Scottish Government
Natural Resources Directorate

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