

Scottish Statutory Instrument 2004 No. 289

The Environmental Protection (Restriction on Use of Lead Shot) (Scotland) Regulations 2004

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SCOTTISH STATUTORY INSTRUMENTS

2004 No. 289

ENVIRONMENTAL PROTECTION

**The Environmental Protection (Restriction on Use of Lead Shot)
(Scotland) Regulations 2004**

Made

10th June 2004

*Laid before the Scottish
Parliament*

11th June 2004

Coming into force

1st September 2004

The Scottish Ministers in exercise of the powers conferred by section 140 of the Environmental Protection Act 1990^[1] and of all other powers enabling them in that behalf, having consulted the committee established under section 140(5) of that Act^[2] in accordance with section 140(6)(a) of that Act, having published a notice in the Edinburgh Gazette and any other publication which they consider appropriate in accordance with section 140(6)(b) of that Act and having considered the representations made to them in respect of that notice in accordance with section 140(6)(c) of that Act; considering it appropriate to make these Regulations for the purpose of preventing the substance or articles specified in them from causing pollution of the environment and harm to the health of animals; hereby make the following Regulations:

Citation, commencement and extent

1. - (1) These Regulations may be cited as the Environmental Protection (Restriction on Use of Lead Shot) (Scotland) Regulations 2004 and shall come into force on 1st September 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations-

"lead shot" means any shot made of-

(a) lead; or

(b) any alloy or compound of lead where lead comprises more than 1% of that alloy or compound;

"the Ramsar Convention" means the Convention of Wetlands of International Importance especially as Waterfowl Habitat signed at Ramsar on 2nd February 1971^[3];

"shot gun" means a smooth-bore gun but does not include any shot gun chambered for 9 millimetre or smaller rim-fire cartridges;

"wetlands" has the meaning given in Regulation 3.

Wetlands

3. - (1) Subject to paragraph (2) "wetlands" has the meaning given in Article 1.1 of the Ramsar Convention.

(2) For the purposes of these Regulations only the reference in that Article to-

(a) "temporary" wetlands means areas which are covered with water on a seasonal, intermittent or regular basis;

(b) "peatland" means only peatlands with visible water.

Prohibition on use of cartridges containing lead shot

4. No person shall use lead shot for the purpose of shooting with a shot gun on or over wetlands.

Powers of investigation etc: police

5. - (1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under these Regulations may without warrant-

(a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;

(b) search for, search or examine any thing which that person may then be using or may have used, or may have or have had in the person's possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing;

(c) seize and detain for the purposes of proceedings under these Regulations any thing which may be evidence of the commission of the offence.

(2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under these Regulations may, for the purpose of exercising the powers conferred by paragraph (1), enter any land other than a dwelling or lockfast premises.

(3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under these Regulations has been committed and that evidence of the offence may be found on any premises other than a dwelling, the sheriff or justice may grant a warrant authorising a constable to enter those premises, if necessary using reasonable force, and search them for the purposes of obtaining that evidence.

(4) A warrant under paragraph (3) continues in force until the purpose for which the entry is required has been satisfied, or, if earlier, the expiry of such period as the warrant may specify.

(5) A constable who enters any land in the exercise of a power conferred by this regulation-

(a) may-

(i) be accompanied by any other persons; and

(ii) take any machinery, other equipment or materials on to the land,

for the purpose of assisting the constable in the exercise of that power; and

(b) may take samples of any articles or substances found there and remove the samples from the land.

(6) A power specified in paragraph (5)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.

Duty to secure land

6. A constable on leaving any land which has been entered in exercise of a power conferred by regulation 5(2), or by a warrant granted under regulation 5(3), which is either unoccupied or whose occupier is temporarily absent, shall leave the land as effectually secured against unauthorised entry as the constable found it.

Offences

7. Any person who contravenes regulation 4 above or causes or permits another person to contravene that regulation shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences by bodies corporate etc.

8. - (1) Where an offence under regulation 7 committed-

(a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who-

(i) is a director, manager or secretary of the body corporate; or

(ii) purports to act in any such capacity;

(b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who-

(i) is a partner; or

(ii) purports to act in that capacity;

(c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who-

(i) is concerned in the management or control of the association; or

(ii) purports to act in the capacity of a person so concerned,

the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(3) Any penalty imposed on a body corporate, Scottish partnership or, as the case may be, unincorporated association on conviction of an offence under this Part is to be recovered by civil diligence in accordance with section 221 of the

Criminal Procedure (Scotland) Act 1995 (c.46).

ALLAN WILSON

Authorised to sign by the Scottish Ministers

St Andrew's House, Edinburgh

10th June 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which apply to Scotland only, prohibit the use of lead shot for shooting with a shot gun on or over wetlands (regulation 4).

Regulation 2 contains definitions of terms used. In regulation 3 "wetlands" is described by reference to Article 1.1 of the Convention of Wetlands of International Importance especially as Waterfowl Habitat signed at Ramsar on 2nd February 1971 (as amended from time to time).

Article 1.1 states: "For the purpose of this Convention wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres"[4][5]. Regulation 3 also clarifies what is meant by the terms "peatland" and "temporary" wetlands in that Article for the purposes of these Regulations.

Regulation 5 sets out powers to enable a constable to ascertain whether an offence has been committed under these Regulations where the constable has reasonable suspicion that an offence has been committed. It sets out powers of search, seizure and entry into any land without a warrant, except for dwellings and lockfast premises. The police are able to obtain a warrant to enter any premises except for dwellings if necessary using reasonable force. There is also a power to enable samples or any articles or substances to be taken. In exercising powers under this regulation a constable may be accompanied by any other person to assist and may take necessary equipment or materials.

Regulation 6 places a duty on a constable to ensure, when leaving unoccupied land or land of which the owner is temporarily absent, which the constable has entered in exercise of the powers under regulation 5, that the land is effectively secured against unauthorised entry as the constable found it.

Regulation 7 creates the offence of contravention, or causing or permitting the contravention of regulation 4. It makes that offence punishable summarily with a fine not exceeding level 3 on the standard scale.

Regulation 8 provides for offences which are committed by bodies corporate, partnerships and unincorporated associations and extends liability to persons in control of such bodies in certain circumstances.

Notes:

[1] 1990 c.43. Section 140(3)(c) was amended by S.I. 1999/1108. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).[back](#)

[2] The Advisory Committee on Hazardous Substances was established by S.I. 1991/1487.[back](#)

[3] As amended by the Protocol known as the Paris Protocol done at Paris on 3rd December 1982 and the amendments known as the Regina Amendments adopted at the Extraordinary Conference of the Contracting Parties held at Regina, Saskatchewan, Canada, between 28th May and 3rd June 1987.[back](#)

[4] The Ramsar Convention provides a detailed "Classification System for Wetland Types", which provides further guidance as to what constitutes a wetland.[back](#)

[5] Administrative guidance on the Regulations will be produced and published by the Scottish Environment and Rural Affairs Department of the Scottish Executive.[back](#)

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