

2012 No. 228

WILDLIFE

**The Conservation (Natural Habitats, &c.) Amendment
(Scotland) Regulations 2012**

<i>Made</i>	- - - -	<i>26th July 2012</i>
<i>Laid before the Scottish Parliament</i>		<i>31st July 2012</i>
<i>Coming into force</i>	- -	<i>16th August 2012</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 and come into force on 16th August 2012.

(2) These Regulations extend to Scotland only.

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

2. The Conservation (Natural Habitats, &c.) Regulations 1994(b) are amended in accordance with regulations 3 to 6.

Definitions and consequential modification

3.—(1) In regulation 2 (interpretation and application)(c)—

(a) after the definition of “destroy” insert—

““the Directives” means the Habitats Directive and the Wild Birds Directive;”;

(b) omit the definition of “the EC Treaty”;

(c) after the definition of “livestock” insert—

““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(d);”;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51)). Section 2(2) was also amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.I. 1994/2716. Relevant amendments are made by paragraph 15 of schedule 2 to the Land Reform (Scotland) Act 2003 (asp 2) (“the 2003 Act”), by S.I. 1997/3055, 2007/1843 and 2010/490, and by S.S.I. 2004/475, 2007/80 and 2011/155.

(c) Regulation 2 was relevantly amended by S.I. 2007/1843 and S.S.I. 2004/475, 2007/80, and 2011/155.

(d) 1994 c.39.

- (d) after the definition of “relevant authorities” insert—
 - ““Scottish marine area” means the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to Scotland;”; and
 - (e) after the definition of “statutory undertaker” omit “and” and insert—
 - ““wild bird” means a bird which is—
 - (a) a member of a species referred to in Article 1 of the Wild Birds Directive; and
 - (b) wild; and”.
- (2) Omit regulation 6(3)(c).

New regulations 3, 3A and 3B

4. For regulation 3 (implementation of Directive)(a) substitute—

“Duties relating to compliance with the Directives

3.—(1) The Scottish Ministers, the appropriate nature conservation body(b) and, in relation to the Scottish marine area, a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.

- (2) Paragraph (1) applies in particular to functions under the following enactments:—

- the Dockyard Ports Regulation Act 1865(c);
- the Hill Farming Act 1946(d);
- Part III of the National Parks and Access to the Countryside Act 1949(e);
- the Land Drainage (Scotland) Act 1958(f);
- the Harbours Act 1964(g);
- the Forestry Act 1967(h);
- section 49A of the Countryside (Scotland) Act 1967(i) (management agreements);
- section 15 of the Countryside Act 1968(j) (areas of special scientific interest);
- Part II of the Control of Pollution Act 1974(k) (pollution of water);
- Part I and section 35 of the Wildlife and Countryside Act 1981(l);

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- (a) Regulation 3 was relevantly amended by S.I. 1997/3055 and 2010/490, by S.S.I. 2004/475 and 2007/80, and by paragraph 15 of schedule 2 to the 2003 Act.
 - (b) Regulation 4(1) of S.I. 1994/2716 provides that in relation to Scotland “the appropriate nature conservation body” means Scottish Natural Heritage.
 - (c) 1865 c.125.
 - (d) 1946 c.73.
 - (e) 1949 c.97.
 - (f) 1958 c.24.
 - (g) 1964 c.40.
 - (h) 1967 c.10.
 - (i) 1967 c.86. Section 49A was inserted by section 9 of the Countryside (Scotland) Act 1981 (c.44), and amended by section 14(3) of and paragraph 4(3) of Schedule 10 to the Natural Heritage (Scotland) Act (c.28) (“the 1991 Act”), and by paragraph 28(6) of schedule 12 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5) (“the 2000 Act”).
 - (j) 1968 c.41. Section 15 was amended by section 72(8) of and Part 1 of Schedule 17 to the Wildlife and Countryside Act 1981 (c.69), by paragraph 4(2) of Schedule 9 and Part 6 of Schedule 16 to the Environmental Protection Act 1990 (c.43), by paragraph 29(2) of schedule 12 to the 2000 Act, and by paragraph 48 of Schedule 11 and Schedule 12 to the Natural Environment and Rural Communities Act 2006 (c.16) (“the 2006 Act”).
 - (k) 1974 c.40.
 - (l) 1981 c.69. Section 35 was amended by paragraph 85 of Schedule 11 to the 2006 Act.

sections 120 to 122 of the Civic Government (Scotland) Act 1982 (control of the seashore, adjacent waters and inland waters)(a);

sections 2, 3, 5, 7 and 11 of the Natural Heritage (Scotland) Act 1991(b);

the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992(c) (conservation in the exercise of sea fisheries functions);

the Environment Act 1995(d);

the Deer (Scotland) Act 1996(e);

the Town and Country Planning (Scotland) Act 1997(f);

the National Parks (Scotland) Act 2000(g);

Part 1 of the Land Reform (Scotland) Act 2003(h) (access rights);

Part 1 of the Water Environment and Water Services (Scotland) Act 2003(i) (protection of the water environment);

Part 2 of the Nature Conservation (Scotland) Act 2004(j) (conservation and enhancement of natural features);

the Natural Environment and Rural Communities Act 2006(k);

the Flood Risk Management (Scotland) Act 2009(l);

the Marine (Scotland) Act 2010(m);

the Water Environment (Controlled Activities) (Scotland) Regulations 2011(n);

and

these Regulations.

(3) Without prejudice to the preceding provisions, a competent authority, in exercising their functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.

Duties in relation to wild bird habitat

3A.—(1) Without prejudice to regulation 3(1), the Scottish Ministers, the appropriate nature conservation body and, in relation to the Scottish marine area, a competent authority must take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers.

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- (a) 1982 c.45. Section 120 was amended by paragraph 129(17) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39) (“the 1994 Act”) and by paragraph 8(a) of schedule 2 to the 2003 Act. Section 121 was amended by section 289G of the Criminal Procedure (Scotland) Act 1975 (c.21) (“the 1975 Act”), by section 141 of, and paragraph 129(18) of Schedule 13 and Schedule 14 to, the 1994 Act, and by paragraph 8 of schedule 2 to the 2003 Act. Section 122 was amended by paragraph 129(19) of Schedule 13 and Schedule 14 to the 1994 Act.
- (b) 1991 c.28. Section 2 was amended by paragraph 48 of Schedule 2 to the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11) (“the 1997 Act”), by S.I. 2009/1941, and by paragraph 3 of schedule 1 to the Public Services Reform (Scotland) Act 2010 (asp 8) (“the 2010 Act”). Section 3 was amended by paragraph 4 of schedule 1 to the 2010 Act. Section 7 was amended by paragraph 1 of Schedule 6 to the Gas Act 1995 (c.45) and by S.I. 1999/1820.
- (c) 1992 c.36. Section 1 was amended by S.I. 1999/1820 and by section 11 and Part 4 of Schedule 22 to the Marine and Coastal Access Act 2009 (c.23).
- (d) 1995 c.25.
- (e) 1996 c.58.
- (f) 1997 c.8.
- (g) 2000 asp 10.
- (h) 2003 asp 2.
- (i) 2003 asp 3.
- (j) 2004 asp 6.
- (k) 2006 c.16.
- (l) 2009 asp 6.
- (m) 2010 asp 5.
- (n) S.S.I. 2011/209.

(2) Except in relation to the Scottish marine area, the Scottish Environment Protection Agency, the Forestry Commissioners(a), local authorities and National Park authorities(b) must take such steps in the exercise of their functions as they consider appropriate to contribute to the achievement of the objective in paragraph (3).

(3) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in Scotland in implementation of Article 3 of the Wild Birds Directive (including by means of the upkeep, management and creation of such habitat, as appropriate), having regard to the requirements of Article 2 of that Directive.

(4) Paragraphs (1) and (2) apply in particular to functions under the following enactments:—

sections 23 and 25 of the Hill Farming Act 1946(c);

sections 16 to 18, 20 and 21 of the National Parks and Access to the Countryside Act 1949(d) (agreements for management of nature reserves, powers of compulsory acquisition of land for nature reserves, and powers to make byelaws for the protection of nature reserves);

section 49A of the Countryside (Scotland) Act 1967 (management agreements);

sections 3, 7, 8A, 9, 10, 17A, 39, 40 and 46 of the Forestry Act 1967(e);

section 15 of the Countryside Act 1968 (areas of special scientific interest);

sections 14D to 14P of the Wildlife and Countryside Act 1981(f) (species control orders);

sections 7, 8 and 10 of the Deer (Scotland) Act 1996(g);

section 1 of the National Parks (Scotland) Act 2000;

section 22 of the Water Environment and Water Services (Scotland) Act 2003;

Part 2 of the Nature Conservation (Scotland) Act 2004 (conservation and enhancement of natural features);

the Marine (Scotland) Act 2010;

(a) See section 1(1) of the Forestry Act 1967.

(b) National Park authorities are established by order under section 7(1)(b) of the National Parks (Scotland) Act 2000 (asp 10). The Loch Lomond and The Trossachs National Park Authority and the Cairngorms National Park Authority were established by S.S.I. 2002/201 and S.S.I. 2003/1 respectively.

(c) Section 23 was substituted by section 34(2) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6) (“the 2011 Act”). Section 25 was amended by section 34(6) of the 2011 Act.

(d) Section 16 was amended by paragraph 1(3) of Schedule 2 to the 1991 Act and by paragraph 14 of Schedule 11 to the 2006 Act. Section 17 was amended by paragraphs 15 and 16 of Schedule 11 to the 2006 Act. Section 18 was amended by Schedule 4 to the Arbitration Act 1996 (c.23) and by paragraphs 15 and 17 of Schedule 11 to the 2006 Act. Section 20 was amended by paragraph 28 of Schedule 4 to the Telecommunications Act 1984 (c.12), paragraph 20 of Schedule 17 to the Communications Act 2003 (c.21), and by paragraph 15 of Schedule 11 to the 2006 Act. Section 21 was amended by Schedules 27 and 29 to the Local Government (Scotland) Act 1973 (c.65), section 10 of the Local Government and Planning (Scotland) Act 1982 (c.43), by Schedule 14 to the 1994 Act, and by paragraphs 15 and 19 of Schedule 11 to the 2006 Act.

(e) Section 3 was amended by S.I. 1999/1747. Section 7 was amended by section 289G of the 1975 Act. Section 8A was inserted by section 4 of the Forestry Act 1981 (c.39) (“the 1981 Act”) and amended by S.I. 1999/1756. Section 9 was amended by section 2(1) of and Schedule 1 to, and section 3(2) of and Schedule 2 to, the Forestry Act 1979 (c.21), by S.I. 1985/1958, by section 112 and Schedule 16 to the Electricity Act 1989 (c.29), and by paragraph 13 of Schedule 2 to the 1997 Act. Section 10 was amended by S.I. 1999/1747, and by paragraph 2(2) of schedule 7 to the Nature Conservation (Scotland) Act 2004 (asp 6). Section 17A was inserted by section 1(a) of the Forestry Act 1986 (c.30), and amended by S.I. 2006/780 and by S.I. 1999/1747. Section 39 was amended by section 1 of the 1981 Act, by Schedule 5 to the Requirements of Writing (Scotland) Act 1995 (c.7) and by S.I. 1999/1747. Section 40 was amended by paragraph 69 of Schedule 13 to the 1994 Act, by S.I. 1999/1747, by S.I. 2001/1149, and by paragraph 86 of Schedule 12(3) to the Postal Services Act 2011 (c.5). Section 46 was amended by section 10(1) of the Decimal Currency Act 1969 (c.19), by Schedule 7D to the 1975 Act, and by S.I. 1999/1747.

(f) Sections 14D to 14P were inserted by section 16 of the 2011 Act.

(g) Section 7 was amended by paragraphs 6 and 13 of schedule 1 to the 2010 Act, and by section 28(2) of the 2011 Act. Section 8 was amended by paragraphs 6 and 14 of schedule 1 to the 2010 Act, and by section 28(3) of the 2011 Act. Section 10 was amended by S.S.I. 2006/367, by paragraphs 6 and 16 of schedule 1 to the 2010 Act, and by section 28(4) of the 2011 Act.

the Water Environment (Controlled Activities) (Scotland) Regulations 2011; and any function exercisable in relation to town and country planning(a).

(5) In section 79(3)(a) of the Marine (Scotland) Act 2010 (creation of network of conservation sites), the reference to “the conservation or improvement of the marine environment” includes the objective in paragraph (3), and accordingly the duty in section 103 (reports to Parliament) of that Act applies in relation to that objective.

(6) In considering which measures may be appropriate for the purpose of securing or contributing to the objective in paragraph (3), regard may be had to economic and recreational requirements.

(7) The Scottish Ministers must take any measures they consider necessary to facilitate or co-ordinate arrangements to secure the taking of steps under paragraphs (1) and (2) by the persons mentioned in those paragraphs.

(8) So far as lies within its powers, a competent authority must use all reasonable endeavours to avoid pollution or deterioration of habitats of wild birds in Scotland.

Review and guidance

3B.—(1) The appropriate nature conservation body must from time to time—

- (a) review the extent to which the objective in regulation 3A(3) has been met, other than in relation to the Scottish marine area;
- (b) set out the conclusions of the review in a report, including any recommendations for further action; and
- (c) send the report to the Scottish Ministers.

(2) In carrying out the review, the appropriate nature conservation body must, so far as is reasonable, take account of any measures taken which contribute to the achievement of that objective, whether or not taken pursuant to a requirement imposed by any enactment.

(3) After consultation with the appropriate nature conservation body, the Scottish Ministers must give guidance to the Scottish Environment Protection Agency, the Forestry Commissioners, local authorities and National Park authorities—

- (a) to facilitate the determination by those bodies of the extent to which the diversity and area of wild bird habitat is sufficient; and
- (b) on the steps that it may be appropriate to take pursuant to regulation 3A(1) or (2).

(4) In exercising a function to which regulation 3A(1) or (2) applies, a body to which guidance has been given under paragraph (3) of this regulation must have regard to that guidance.”.

Amendment of regulation 37

5.—(1) Regulation 37 (nature conservation policy in planning contexts) is amended as follows:—

- (a) in paragraph (1) for “the planning enactments” to “amenity of the land” substitute “section 15(1)(a) of the Town and Country Planning (Scotland) Act 1997, the reference to policies as to the development and use of land”; and
- (b) omit paragraph (2).

(2) Regulation 37 continues to have effect as it did immediately before the date on which these Regulations come into force for the purposes of a local plan to which articles 4 or 5 of the

(a) National Park authorities have functions exercisable in relation to town and country planning as regards National Parks by virtue of article 7 of S.S.I. 2002/201 and article 7 of S.S.I. 2003/1.

Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008(a) applies.

New regulation 111

6. After regulation 110 (advisory role of Natural England, the Countryside Council for Wales and Scottish Natural Heritage) insert—

“Research

111.—(1) The Scottish Ministers must take such steps to encourage research and scientific work as they consider necessary—

- (a) having regard to the objectives in Article 2, and the obligation in Article 11, of the Habitats Directive; and
- (b) for the purpose of the protection or management, and in relation to the use, of any population of wild bird.

(2) The Scottish Ministers must supply such information as they consider appropriate to the European Commission and, in the case of information supplied for the purposes of the Habitats Directive, to member States, to further the proper co-ordination of research carried out by member States or by the European Commission for the purposes of the Directives.

(3) In deciding what steps to take under paragraph (1), the Scottish Ministers must have particular regard to the need for research and scientific work—

- (a) on the subjects listed in Annex V to the Wild Birds Directive; or
- (b) which may be required to implement Articles 4 and 10 of the Habitats Directive.”.

Amendment of the National Parks and Access to the Countryside Act 1949

7. In section 15 of the National Parks and Access to the Countryside Act 1949(b) (meaning of “nature reserve”), after subsection (2) insert—

“(2A) In subsection (2)(b) the reference to preserving flora or fauna includes enabling or facilitating its recovery or increase.”.

Modification of provisions

8. The provisions specified in column 1 of the table in the Schedule are revoked or repealed to the extent specified in column 3 of that table.

St Andrew’s House,
Edinburgh
26th July 2012

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2008/427, to which there are amendments not relevant for the purposes of these Regulations.
(b) Section 15 was substituted by paragraph 12 of Schedule 11 to the 2006 Act.

SCHEDULE

Regulation 8

REVOCATIONS AND REPEAL

<i>Column (1)</i> <i>Provisions</i>	<i>Column (2)</i> <i>References</i>	<i>Column (3)</i> <i>Extent of revocation or repeal</i>
The Conservation (Natural Habitats, &c.) (Amendment) Regulations 1997	S.I. 1997/3055	in whole
The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004	S.S.I. 2004/475	regulation 5
The Land Reform (Scotland) Act 2003	asp 2	schedule 2, paragraph 15
The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007	S.S.I. 2007/80	regulation 6
The Conservation (Natural Habitats, &c.) Amendment Regulations 2007	S.I. 2007/1843	the definition of “the EC Treaty” in regulation 5(2)((d)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”), which make provision for the transposition of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p.7) (“the Habitats Directive”) and certain aspects of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (OJ L 20, 26.1.2010, p.7) (“the Birds Directive”).

These Regulations extend to Scotland only.

Regulation 3 makes amendments to regulation 2 of the 1994 Regulations (interpretation and application), and makes a consequential change in respect of regulation 6(3)(c).

Regulation 4 substitutes a new regulation 3 (duties relating to compliance with the Directives) which provides that public bodies must exercise their functions relevant to nature conservation so as to comply with the Habitats Directive and the Birds Directive.

It also inserts regulation 3A (duties in relation to wild bird habitat), which imposes new duties on public bodies in relation to wild bird habitat, and regulation 3B (review and guidance), which requires Scottish Natural Heritage to review and report on whether the obligations under regulation 3A have been met, and the Scottish Ministers to provide guidance in relation to those obligations.

Regulation 5 amends regulation 37 (nature conservation policy in planning contexts) to update references to planning legislation in that provision.

Regulation 6 inserts regulation 111 (research) into the 1994 Regulations, making provision as regards research and scientific work for the purposes of the Habitats Directive and the Birds Directive.

Regulation 7 amends section 15 of the National Parks and Access to the Countryside Act 1949.

Regulation 8 and the Schedule revoke (and in one case, repeal) amendments to the 1994 Regulations which will be spent when these Regulations come into force.

No Business and Regulatory Impact Assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.

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