SCOTTISH STATUTORY INSTRUMENTS

2004 No. 475

WILDLIFE
COUNTRYSIDE

The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004

Made - - - -	*3rd November 2004*
Laid before the Scottish Parliament - - - -	*4th November 2004*
Coming into force - -	*29th November 2004*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F1] and section 26A of the Wildlife and Countryside Act 1981 [F2] and of all other powers enabling them in that behalf, hereby make the following Regulations:

F1 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), **Schedule 8**, paragraph 15(3). The functions conferred upon a Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

F2 1981 (c. 69). Section 26A of the 1981 Act was inserted by s.50 and paragraph 22 of schedule 6 to the Nature Conservation (Scotland) Act 2004 (asp 6).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 and shall come into force on 29th November 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations–

"the 2004 Act" means the Nature Conservation (Scotland) Act 2004 [F3]; and

"the 1994 Regulations" means the Conservation (Natural Habitats, &c.) Regulations 1994 [F4].

F3 2004 asp 6.

F4 S.I. 1994/2716; relevant amendments are 2003 asp 2, **S.I**. 1996/973, 1997/3055, 1999/1820 and S.S.I. 2000/323.

Amendments to the 1994 Regulations

3. The 1994 Regulations are amended in accordance with regulations 4 to 19.

Amendments to Part I

4. In regulation 2 (interpretation and application)–

(a) in paragraph (1)–

(i) before the definition of "agriculture Minister" insert–

""the 2004 Act" means the Nature Conservation (Scotland) Act 2004 [F5];";

(ii) in the definition of "the Habitats Directive" for the words from "as amended by"[F6] to the end substitute–

"as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded [F7];";

(iii) for the definition of "land" substitute–

""land" includes buildings and other structures, land covered with water, and any right or interest in or over land;";

(iv) after the definition of "Natura 2000" insert–

""natural feature" in relation to land means–

(a) any of its flora or fauna, or

(b) any natural habitat existing on that land";

(v) for the definition of "statutory undertaker" substitute–

""statutory undertaker" has the meaning given in section 58(1) of the 2004 Act;"; and

(vi) in the definition of "the Wild Birds Directive" at the end add " as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded "; and

(b) after paragraph (1) insert–

"(1A) An animal shall not be treated as bred in captivity for the purposes of Part III of these Regulations unless its parents were lawfully held in captivity–

(a) where the animal is of a viviparous species, when it was born;

(b) where the animal is of an oviparous species, when the egg was laid.

(1B) The reference in paragraph (1A) to "lawfully" means without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981.".

F5 2004 (asp 6).

F6 These words were inserted in the definition of "the Habitats Directive" by S.I. 1997/3055.

F7 O.J. L 236, 23.9.03, p.33.

F8 5. . . . . . .

F8 Reg. 5 revoked (16.8.2012) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), reg. 1(1), **sch.**

Amendments to Part II

6. In regulation 10 (meaning of "European site" in these Regulations)–

(a) after paragraph (1)(c) omit "or";

(b) at the end of paragraph (1)(d) add–

", or

(e) a site in Scotland included in a list of sites proposed under regulation 7(1).";

(c) in paragraph (2)–

(i) for "regulations 20(1) and (2), 24 and" substitute " regulation "; and

(ii) for "relate" substitute " relates ".

7. In regulation 11 (duty to compile and maintain register of European sites) at the end of paragraph (2)(d) add–

"; and

(e) any site in Scotland included in a list of sites proposed under regulation 7(1)."

8. In regulation 17 (continuation in force of existing agreement, &c.) omit paragraphs (1) and (2).

9. For regulations 18 to 22 substitute–

"**Offence of intentional or reckless damage to a European site**

18.—(1) Any person who intentionally or recklessly damages any natural feature by reason of which land is a European site is, subject to paragraph (2), guilty of an offence.

(2) Any person who does anything which would, but for this paragraph, amount to an offence under paragraph (1) is not guilty of the offence if it is shown that–

(a) the act was the incidental result of a lawful operation,

(b) the person who carried out the lawful operation–

(i) took reasonable precautions for the purpose of avoiding carrying out the act, or

(ii) did not foresee, and could not reasonably have foreseen, that the act would be an incidental result of the carrying out of the lawful operation, and

(c) that person took such steps as were reasonably practicable in all the circumstances to minimise the damage caused.

(3) Any person guilty of an offence under paragraph (1) is liable–

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale,

(b) on conviction on indictment, to a fine.

Application of Chapters 2, 3 and 4 of Part 2 of the 2004 Act

19.—(1) Subject to paragraph (2) and regulations 20 to 22, the following provisions of Part 2 of the 2004 Act apply, for the purposes of these Regulations, in relation to European sites–

(a) Chapter 2 (nature conservation orders) and schedule 2 (nature conservation orders and related orders: procedure);

(b) Chapter 3 (land management orders) and schedule 3 (land management orders and related orders: procedure); and

(c) in Chapter 4–

(i) section 39 (acquisition of land by SNH);

(ii) section 40 (restoration orders);

(iii) section 41 (signs, etc.);

(iv) section 43 (powers of investigation etc.: police);

(v) section 44 (powers of entry: authorised persons) and schedule 4 (powers of entry of authorised persons: further provision); and

(vi) section 46 (offences: penalties and time limits);

(2) For the purposes of these Regulations, any reference in the provisions referred to in paragraph (1)(a) to (c)–

(a) to a "natural feature" shall be construed as if it was a reference to a "natural feature" within the meaning of regulation 2 of these Regulations;

(b) to a "site of special scientific interest" shall be construed as if it was a reference to a European site;

(c) to the 2004 Act or any Part thereof, shall be construed as if it was a reference to these Regulations;

(d) to a term defined in the 2004 Act shall, unless the context otherwise requires, bear the same meaning as in that Act.

Chapter 2 of Part 2 of the 2004 Act

20. The provisions of Chapter 2 of Part 2 of the 2004 Act apply for the purposes of these Regulations as if–

(a) in section 23 (nature conservation orders)–

(i) in subsection (2)(a) for "special interest," there was substituted–

"significance in relation to the objectives of–

(i) Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [F9] as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded; and

(ii) Council Directive 79/409/EEC on the conservation of wild birds [F10] as last amended by that Act";

(ii) the reference to "international obligation" in subsection (2)(b) included the obligations set out in the Directives referred to in subsection (2)(a) of that section; and

(iii) in subsection (3)(b) for the words from "special interest" to "features," there was substituted " significance in relation to the objectives of the Directives referred to in subsection (2)(a) "; and

(b) in section 27 (offences in relation to nature conservation orders) the reference to "£40,000" was a reference to "level 5 on the standard scale".

Chapter 3 of Part 2 of the 2004 Act

21. The provisions of Chapter 3 of Part 2 of the 2004 Act apply for the purposes of these Regulations as if–

(a) any reference to a "management agreement" included a reference to a management agreement entered into under regulation 16 of these Regulations;

(b) in section 29(2)(b) (proposals for land management orders) for "specified in an SSSI notification" there was substituted " by reason of which land is a European site ";

(c) in section 36(3)(a) (offences in relation to land management orders) the reference to "£40,000" was a reference to "level 5 on the standard scale".

Chapter 4 of Part 2 of the 2004 Act

22. The provisions of Chapter 4 of Part 2 of the 2004 Act referred to in regulation 19(1)(c) apply for the purposes of these Regulations as if–

(a) any reference to "protected natural feature" was a reference to a natural feature–

(i) by reason of which the land is a European site; or

(ii) by reason of which a nature conservation order has effect;

(b) in section 40 (restoration orders)–

(i) in subsection (1)(b), the reference to "19(3)" was omitted; and

(ii) in subsection (4)(a), the reference to "£40,000" was a reference to "level 5 on the standard scale";

(c) in section 41(1) (signs etc.) for the words from "any land" to the end there was substituted " a European site ";

(d) in section 43 (powers of investigation etc.: police) the references to "this Part" in each place where they occur were references to regulations 18 to 22 of these Regulations; and

(e) in section 44 (powers of entry: authorised persons)–

(i) in subsection (i)–

(a) paragraphs (a) and (j) were omitted;

(b) in paragraphs (c) and (d), the reference to "management agreement" included a reference to a management agreement entered into under regulation 16 of these Regulations;