

Draft Regulations laid before the Scottish Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of the Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2007 No.

WILDLIFE

COUNTRYSIDE

**The Conservation (Natural Habitats, &c.) Amendment
(Scotland) Regulations 2007**

Made - - - - - *2007*

Coming into force in accordance with regulation 2

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and section 26A of the Wildlife and Countryside Act 1981(b) and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972, been laid before and approved by resolution of the Scottish Parliament:

PART I

CITATION, COMMENCEMENT AND EXTENT

1. These Regulations may be cited as the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007.
2. These Regulations shall come into force on the day after the day on which they are made.
3. These Regulations extend to Scotland only.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The functions conferred upon the 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. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

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

PART II
AMENDMENTS TO THE CONSERVATION (NATURAL HABITATS, &c.)
REGULATIONS 1994

4. The Conservation (Natural Habitats &c.) Regulations 1994(a) are amended in accordance with regulations 5 to 25.

5. In regulation 2(1) (interpretation and application)–

(a) for the definition of “the Habitats Directive” substitute–

““the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(b) as amended from time to time;”;

(b) omit the definition of “occupier”.

6. In regulation 3(3) (implementation of Directive)(c), after “the Land Drainage Act 1991,” insert “Part 1 of the Water Environment and Water Services (Scotland) Act 2003(d), the Water Environment (Controlled Activities) (Scotland) Regulations 2005(e)”.

7. After regulation 5(h) (relevant authorities in relation to marine areas and European marine sites)(f) insert–

“(i) a National Park authority established by order under section 6 of the National Parks (Scotland) Act 2000(g)”.

8. In regulation 10(1)(e) (meaning of “European site” in these Regulations)(h) omit “in Scotland”.

9. After regulation 37 (nature conservation policy in planning contexts) insert–

“Surveillance of conservation status of habitats and species

37A.—(1) The Scottish Ministers shall make arrangements for the carrying out of surveillance of the conservation status of natural habitats of Community interest and species of Community interest, and in particular priority natural habitat types and priority species.

(2) Where, in the case of any species of wild fauna and flora listed in Annex V to the Habitats Directive, the Scottish Ministers consider that the results of surveillance under paragraph (1) makes it necessary to do so, they shall make arrangements for ensuring that the taking in the wild of specimens of such species, and their exploitation, is compatible with their being maintained at favourable conservation status.

(3) The arrangements to be made under paragraph (2) shall include arrangements for the carrying out of surveillance of the conservation status of the species in question, for the purpose of establishing whether the taking in the wild of specimens of such species, and their exploitation, is compatible with their being maintained at favourable conservation status.

(4) The Scottish Ministers shall, from time to time, review the arrangements they have made under paragraphs (1), (2) or (3) and if they think it appropriate, revise those arrangements.”.

(a) S.I. 1994/2716. The 1994 Regulations make provision for the purpose of implementing, for Great Britain, Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

(b) O.J. No. L 206, 22.7.1992, p.7.

(c) There are amendments to regulation 3 not relevant to these Regulations.

(d) 2003 asp 3.

(e) S.S.I. 2005/348 as amended by S.S.I. 2006/553.

(f) There are amendments to regulation 5 not relevant to these Regulations.

(g) 2000 asp 10; the Loch Lomond and The Trossachs National Park Authority was established by the Loch Lomond and The Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 (S.S.I. 2002/201). The Cairngorms National Park Authority was established by the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (S.S.I. 2003/1).

(h) Regulation 10(1)(e) was inserted by regulation 6 of the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475).

10. Subject to regulation 31, for regulation 39 (protection of wild animals of European protected species) substitute—

“Protection of certain wild animals

39.—(1) It is an offence—

- (a) deliberately or recklessly to capture, injure or kill a wild animal of a European protected species;
- (b) deliberately or recklessly—
 - (i) to harass a wild animal or group of wild animals of a European protected species;
 - (ii) to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
 - (iii) to disturb such an animal while it is rearing or otherwise caring for its young;
 - (iv) to obstruct access to a breeding site or resting place of such an animal, or otherwise to deny the animal use of the breeding site or resting place;
 - (v) to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; or
 - (vi) to disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young;
- (c) deliberately or recklessly to take or destroy the eggs of such an animal; or
- (d) to damage or destroy a breeding site or resting place of such an animal.

(2) Subject to the provisions of this Part, it is an offence to deliberately or recklessly disturb any dolphin, porpoise or whale (cetacean).

(3) It is an offence for any person—

- (a) on or after 1st May 2007 to possess or control;
- (b) on or after 1st May 2007 to transport;
- (c) to sell or exchange; or
- (d) to offer for sale or exchange,

anything to which paragraph (4) applies.

(4) This paragraph applies to—

- (a) any live or dead animal or part of an animal—
 - (i) which has been taken from the wild; and
 - (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and
- (b) anything derived from, such an animal or part of such an animal.

(5) The offences in paragraph (1), (2) and (3) apply to all stages of the life of the animals to which they apply.

(6) Subject to paragraph (7), a person shall not be guilty of an offence under paragraph (3) if that person shows that the animal, or part of the animal in question, or the animal or part of the animal from which the thing in question is derived, was lawfully taken from the wild.

(7) The defence under paragraph (6) does not apply—

- (a) in respect of the offences in paragraph (3)(a) or (b) if—
 - (i) the animal in question is an animal of a European protected species, or the part or thing in question is derived from such an animal; and

- (ii) the animal, part or thing in question was in the defender's possession, or transported by the defender, for the purpose of sale or exchange;
 - (b) in respect of the offences in paragraph (3)(c) or (d), if the animal is an animal of a European protected species, or the part or thing in question is derived from such an animal.
- (8) For the purposes of paragraph (6) an animal, or part of an animal, shall be treated as having been lawfully taken from the wild if–
- (a) it was taken from the wild in the European territory of a member State to which the Habitats Directive applies without contravention of the law of that member State and before the implementation date; or
 - (b) it was taken from the wild elsewhere without contravention of the law of the country or territory from where it was taken.
- (9) A person shall not be guilty of an offence under paragraph (3) if that person shows that the animal, or the animal from which the part or thing in question is derived–
- (a) is of a species listed in the second column of the table in Schedule 2A and was from a population occurring in a country or area which is specified in respect of that species in the third column of that Schedule;
 - (b) is of the species *Capra aegagrus* and was not from a naturally occurring population;
 - (c) is of the species *Ovis gmelini musimon* and was not from a naturally occurring population in Corsica or Sardinia; or
 - (d) is of the species *Coregenus oxyrhynchus* and either was from Finland or was not from an anadromous population.
- (10) Subject to the provisions of this Part, it is an offence to knowingly cause or permit to be done an act which is made unlawful by any of the provisions of this regulation.
- (11) Unless the contrary is shown, in any proceedings–
- (a) for an offence under paragraph (1) or (2), the animal in question shall be presumed to have been a wild animal; and
 - (b) for an offence under paragraph (3) (as the case may be)–
 - (i) the animal or part of the animal in question shall be presumed to have been taken from the wild; or
 - (ii) the part or thing in question shall be presumed to be from an animal or part of an animal taken from the wild.
- (12) Subject to paragraph (13), a person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.
- (13) A person guilty of an offence under paragraph (3) insofar as it relates to any live or dead animal or part of an animal, or any part of, or anything derived from an animal or part of an animal, which is of a species or subspecies which was not listed in Annex IV(a) to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as it stood immediately before it was 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 is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.
- (14) In this regulation–
- “the implementation date” means–
 - (a) where the relevant State became a member State before 10th June 1994, 10th June 1994; and

(b) in any other case, the date on which the relevant State became a member State; and

“relevant State” means the State in whose territory the animal, or part of it, was taken from the wild.”.

11. For regulation 40 (exceptions from regulation 39) substitute—

“Exceptions to regulation 39

40.—(1) A person shall not be guilty of an offence under regulation 39(1)(a) or (b), (2), or (3)(a) or (b), if that person shows that what was done—

- (a) was in relation to an animal that had been seriously disabled otherwise than by that person’s unlawful act and there was no reasonable chance of its recovering; and
- (b) was done solely for one or more of the purposes of—
 - (i) ending the animal’s life in a humane manner; or
 - (ii) where the animal’s life had been so ended, disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(2) A person shall not be guilty of the offence under regulation 39(1)(a) of deliberately or recklessly capturing a wild animal of a European protected species, or an offence under regulation 39(3)(a) or (b), if that person shows that what was done—

- (a) was in relation to an animal that had been disabled otherwise than by that person’s unlawful act; and
- (b) was done solely for one or more of the purposes of—
 - (i) tending it and releasing it when no longer disabled; or
 - (ii) releasing it after it had been tended,and was done in a manner or in circumstances unlikely to cause the animal unnecessary suffering.

(3) A person shall not be guilty of an offence by reason of any act made unlawful by regulation 39 if that person shows that the act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.”.

12. In regulation 41 (prohibition of certain methods of taking or killing wild animals)(a)—

- (a) at the end of paragraph (2)(a) omit “or”; and
- (b) at the end of paragraph (2)(b) insert—

“, or
- (c) any other means of taking or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal listed in Schedule 3 to these Regulations or any European protected species of animal.”.

13. After regulation 41 insert—

“Monitoring incidental capture and killing

41A.—(1) The Scottish Ministers shall make arrangements for monitoring the incidental capture and killing of animals of the species listed in Annex IV(a) to the Habitats Directive.

(2) In light of the information gathered from monitoring under paragraph (1), the Scottish Ministers shall make arrangements for the carrying out of such research or the taking of such conservation measures as are necessary for ensuring that such incidental capture and killing does not have a significant negative impact on the species in question.

(a) Regulation 41(6), which imposes penalties for offences under that regulation, was amended by the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regulation 12.

(3) The Scottish Ministers shall, from time to time, review the arrangements they have made under paragraph (1) or (2) and, if they think it appropriate, revise those arrangements.”.

14. Subject to regulation 31, for regulation 43 (protection of wild plants of European protected species) substitute—

“Protection of certain wild plants

43.—(1) It is an offence deliberately or recklessly to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence for any person—

- (a) on or after 1st May 2007 to possess or control;
- (b) on or after 1st May 2007 to transport;
- (c) to sell or exchange; or
- (d) to offer for sale or exchange,

anything to which paragraph (3) applies.

(3) This paragraph applies to—

- (a) any live or dead plant, or part of a plant—
 - (i) which has been taken in the wild; and
 - (ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte) or IV(b) to the Habitats Directive; and
- (b) anything derived from such a plant or part of such a plant.

(4) The offences in paragraphs (1) and (2) apply to all stages of the biological cycle of the plants to which they apply.

(5) Subject to paragraph (6), a person shall not be guilty of an offence under paragraph (2) if that person shows that the plant or part of the plant in question, or the plant or part of the plant from which the thing in question is derived, was lawfully taken in the wild.

(6) The defence under paragraph (5) does not apply—

- (a) in the case of the offences in paragraph (2)(a) or (b) if—
 - (i) the plant in question is a plant of a European protected species, or the part or thing in question is derived from such a plant; and
 - (ii) the plant, part or thing in question was in the defender’s possession or control, or transported by the defender, for the purpose of sale or exchange;
- (b) in the case of the offences in paragraph (2)(c) or (d) if the plant in question is a plant of a European protected species, or the part or thing in question is derived from such a plant.

(7) For the purposes of paragraph (5) a plant, or part of a plant, shall be treated as having been lawfully taken in the wild if—

- (a) it was taken in the wild in the European territory of a member State to which the Habitats Directive applies without contravention of the law of that member State and before the implementation date; or
- (b) it was taken in the wild elsewhere without contravention of the law of the country or territory in which it was taken.

(8) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the provisions of this regulation shall be guilty of an offence.

(9) Unless the contrary is shown, in any proceedings—

- (a) for an offence under paragraph (1), the plant in question shall be presumed to have been a wild plant; and
- (b) for an offence under paragraph (2) (as the case may be)–
 - (i) the plant or part of the plant in question shall be presumed to have been taken in the wild; or
 - (ii) the part or thing in question shall be presumed to be from a plant or part of a plant taken in the wild.

(10) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

(11) In this regulation–

“the implementation date” means–

- (a) where the relevant State became a member State before 10th June 1994, 10th June 1994; and
- (b) in any other case, the date on which the relevant State became a member State; and

“relevant State” means the State in whose territory the plant, or part of it, was taken in the wild.”.

15. In regulation 44 (grant of licences for certain purposes)(a)–

(a) after paragraph (2) insert–

“(2A) Subject to paragraph (2B), the appropriate authority may grant a licence to permit the taking or the possession or control of certain specimens of any of the species listed in Annex IV to the Habitats Directive notwithstanding that the licence is for a purpose not falling within paragraph (2).

(2B) The appropriate authority shall only grant a licence under paragraph (2A) where it is satisfied that the grant of the licence would be compatible with the restrictions in Article 16(1)(e) of the Habitats Directive.

(2C) Regulations 39, 41 and 43 do not apply to anything done under and in accordance with the terms of a licence granted by the appropriate authority under paragraph (2A).”;

(b) for paragraph (4)(b) substitute–

“(b) in the case of any other licence granted under this regulation, the Scottish Ministers.”; and

(c) for paragraph (5) substitute–

“(5) The Scottish Ministers shall from time to time consult with the nature conservation bodies as to the exercise of the Scottish Ministers’ functions under this regulation; and they shall not grant a licence of any description unless they have been advised by the appropriate nature conservation body as to the circumstances in which, in the opinion of the appropriate nature conservation body, licences of that description should be granted.”.

16. In regulation 45 (licences: supplementary provisions)–

(a) at the beginning of paragraph (1) insert “Subject to the provisions of this regulation,”; and

(b) after paragraph (4) insert–

“(4A) A licence granted under regulation 44(2A) shall specify–

- (a) the species of animal or plant the specimens of which the person authorised by the licence may take or possess or control;
- (b) the maximum number of specimens which the person authorised by the licence may take or possess or control, or which particular specimens that person may take or possess or control; and

(a) There are amendments to regulation 44 not relevant to these Regulations.

- (c) the conditions subject to which the action authorised by the licence may be taken and in particular—
 - (i) the methods, means or arrangements by which specimens may be taken or be in the possession or control of the person authorised by the licence;
 - (ii) when or over what period the action authorised by the licence may be taken; and
 - (iii) where it authorises any person to take specimens, the area from which they may be taken.”.

17. After regulation 46 (false statements made for obtaining licence) insert—

“Offence of breaching licence condition

46A.—(1) It is an offence for any person authorised by virtue of a licence granted under regulation 44 on or after 15th May 2007 to contravene, or fail to comply with, any condition imposed on the grant of a licence.

(2) A person shall not be guilty of an offence under paragraph (1) if that person shows that—

- (a) that person took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or
- (b) the commission of the offence was otherwise due to matters beyond that person’s control.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.”.

18. At the end of regulation 48(2) (assessment of implications for European site) insert—

“or to enable the competent authority to determine whether an appropriate assessment is required”.

19. For regulation 49(2)(b) (considerations of overriding public interest) substitute—

“(b) any other imperative reasons of overriding public interest, provided that the competent authority has had regard to the opinion of the European Commission in satisfying itself that there are such reasons.”.

20. After regulation 84A (permits under the Pollution Prevention and Control (Scotland) Regulations 2000)(a) insert—

“Abstraction and works authorised under water legislation

84B.—(1) Regulations 48 and 49 apply in relation to—

- (a) the grant of an authorisation under regulation 8 (registration) or 9 (water use licence);
- (b) the variation under regulation 19 (variation of authorisation) in accordance with either regulation 20 (procedure for variation) or regulation 21 (request for variation), as the case may be, or the partial variation under regulation 25(4) (determination of application for surrender) of an authorisation; and
- (c) the determination of an appeal under regulation 47 (determination of appeals) against a decision of the Scottish Environment Protection Agency referred to in regulation 46(a), (b), (c), (d), (e), (ee) or (g),

(a) Regulation 84A was inserted by the Pollution Prevention and Control (Scotland) Regulations 2000, Schedule 10(2), paragraph 12 (S.S.I. 2000/323).

of the Water Environment (Controlled Activities) (Scotland) Regulations 2005(a) (“the 2005 Regulations”).

(2) In a case referred to in paragraph (1), where the competent authority considers that any adverse effects of the plan or project on the integrity of a European site would be avoided if the grant or variation of the authorisation were subject to conditions or, as the case may be, further conditions, it may grant or vary the authorisation subject to those conditions.

(3) Regulations 50 and 51 apply to authorisations under regulation 8 or 9 of the 2005 Regulations.

(4) Where on the review of an authorisation under regulation 8 or 9 of the 2005 Regulations, the competent authority considers that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the activity authorised would be avoided by a variation of the authorisation, it may vary the authorisation, or cause it to be varied, accordingly.”.

21. In regulation 85(1) (discharge consents under water pollution legislation), omit “, or” and sub-paragraph (b).

22. After Part IV (adaptation of planning and other controls) insert Part IVA as set out in Schedule 1 to these Regulations.

23. In regulation 101A (application of sections 19ZC and 19ZD of the Wildlife and Countryside Act 1981)(b) substitute “39(3)” for “39(2)” where it appears in paragraphs (3)(a), (c) and (e), and (4)(c) and (d).

24. After regulation 104 (savings for other protective provisions) insert–

“Application of criminal offences to the Crown

104A.—(1) No contravention by the Crown of any provision of these Regulations makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(2) Despite paragraph (1), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to other persons.”.

25. After Schedule 2 insert Schedule 2A as set out in Schedule 2 to these Regulations.

PART III

AMENDMENTS TO OTHER LEGISLATION

26. In section 10 (power to grant licences) of the Conservation of Seals Act 1970(c)–

(a) after subsection (4) insert–

“(4A) A licence under this section does not authorise the use of any method of killing or taking seals which is inconsistent with regulation 41 of the Conservation (Natural Habitats, &c.) Regulations 1994 or any other enactment for the time being in force for the purpose of giving effect to Article 15 of the Habitats Directive (as read subject to any derogation permitted by Article 16 of that Directive).”; and

(b) after subsection (5) insert–

(a) S.S.I. 2005/348 as amended by S.S.I. 2006/553.

(b) Regulation 101A was inserted by regulation 18 of the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475).

(c) 1970 c.30. There are amendments to section 10 not relevant to these Regulations.

“(6) In subsection (4A), the “Habitats Directive” means the Directive of the Council of the European Communities dated 21st May 1992 (No. 92/43/EEC) on the conservation of natural habitats and of wild flora and fauna(a), as amended from time to time.”.

27. The Wildlife and Countryside Act 1981(b) is amended in accordance with regulations 28 and 29.

28. The following animals are removed from Schedule 5(c)–

<i>Common name</i>	<i>Scientific name</i>
Bats, Horseshoe (all species)	Rhinolophidae
Bats, Typical (all species)	Vespertilionidae
Butterfly, Large Blue	Maculinea arion
Cat, Wild	Felis silverstris
Dormouse	Muscardinus avellanarius
Lizard, Sand	Lacerta agilis
Newt, Great Crested (otherwise known as Warty newt)	Triturus cristatus
Otter, Common	Lutra lutra
Snake, Smooth	Coronella austriaca
Sturgeon	Acipenser sturio
Toad, Natterjack	Bufo calamita
Turtles, Marine (all species)	Dermochelyidae and Cheloniidae
Dolphins (all species)	Cetacea
Porpoises (all species)	Cetacea
Whale (all species)	Cetacea

(a) O.J. No. L 206, 22.7.1992, p.7.

(b) 1981 c.69.

(c) The entries relating to the wild cat, dolphins (all species), the dormouse, porpoises (all species), marine turtles (all species) and whale (all species) were inserted by article 2 of the Wildlife and Countryside Act 1981 (Variation of Schedules) Order 1988 (S.I. 1988/288). The entry relating to the sturgeon was inserted by article 2 of the Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) Order 1992 (S.I. 1992/2350). There are further amendments to Schedule 5 not relevant to these Regulations.

29. The following plants are removed from Schedule 8(a)–

<i>Common name</i>	<i>Scientific name</i>
Dock, Shore	<i>Rumex rupestris</i>
Fern, Killarney	<i>Trichomanes speciosum</i>
Gentian, Early	<i>Gentianella anglica</i>
Lady’s-slipper	<i>Cypripedium calceolus</i>
Marshwort, Creeping	<i>Apium repens</i>
Naiad, Slender	<i>Najas flexilis</i>
Orchid, Fen	<i>Liparis loeselii</i>
Plantain , Floating Water	<i>Luronium natans</i>
Saxifrage, Marsh	<i>Saxifrage hirulus</i>

30. In Column 2 of the Schedule to the Spring Traps Approval (Scotland) Order 1996(b) substitute “Schedule 6” for “Schedules 5 and 6” in each place where those words appear.

PART IV

TRANSITIONAL AND SAVINGS PROVISIONS

31.—(1) Despite the coming into force of regulation 10, the Conservation (Natural Habitats, &c.) Regulations 1994(c) as they stood on the date that these Regulations were made shall continue in full force and effect, up to and including 30th April 2007, so far as they relate to an offence under regulation 39(2) (as it stood on the date that these Regulations were made) of keeping or transporting any live or dead wild animal of a European protected species or any part of, or anything derived from, such an animal.

(2) Despite the coming into force of regulation 14, the Conservation (Natural Habitats, &c.) Regulations 1994 as they stood on the date that these Regulations were made shall continue in full force and effect, up to and including 30th April 2007, so far as they relate to an offence under regulation 43(2) (as it stood on the date that these Regulations were made) of keeping or transporting any live or dead wild plant of a European protected species, or any part of, or anything derived from, such a plant.

(3) In this Regulation “European protected species” shall be construed in accordance with regulations 38 and 42 respectively of the Conservation (Natural Habitats, &c.) Regulations 1994.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh

2007

(a) The entry relating to the creeping marshwort was inserted by article 3 of the Wildlife and Countryside Act 1981 (Variation of Schedules) Order 1988 (S.I. 1988/288). The entries relating to the shore dock, the early gentian, the slender naiad, the floating water plantain and the marsh saxifrage were inserted by article 3 of the Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) Order 1992 (S.I. 1992/2350). There are further amendments to Schedule 8 not relevant to these Regulations.

(b) S.I. 1996/2202 (S.178).

(c) S.I. 1994/2716 as amended by S.S.I. 2004/475.

PART IVA to be inserted in the Conservation (Natural Habitats, &c.)
Regulations 1994

“PART IVA

APPROPRIATE ASSESSMENTS FOR LAND USE PLANS

Interpretation

85A.—(1) In this Part—

“the 1997 Planning Act” means the Town and Country Planning (Scotland) Act 1997^(a);

“land use plan” means an alteration or replacement of a structure plan or local plan as provided for in Part II of the 1997 Planning Act;

“plan-making authority” means—

- (a) a planning authority;
- (b) the Loch Lomond and the Trossachs National Park Authority^(b) and the Cairngorms National Park Authority^(c);
- (c) the Scottish Ministers when exercising powers under section 10 (approval or rejection of structure plans), section 19 (approval of plans or proposals) and section 22 (default powers of the Scottish Ministers) of the 1997 Planning Act;

“planning authority” has the meaning given in section 1 of the 1997 Planning Act.

(2) References in this Part to giving effect to a land use plan are to—

- (a) the adoption by a planning authority, the Loch Lomond and the Trossachs National Park Authority or the Cairngorms National Park Authority of a local plan under section 17 of the 1997 Planning Act;
- (b) the approval by the Scottish Ministers of a structure plan under section 10 or a local plan under section 19 of the 1997 Planning Act.

Assessment of implications for European site

85B.—(1) Where a land use plan—

- (a) is likely to have a significant effect on a European site in Great Britain (either alone or in combination with other plans or projects); and
- (b) is not directly connected with or necessary to the management of the site,

the plan-making authority for that land use plan shall, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives.

(a) 1997 c.8.

(b) The Loch Lomond and the Trossachs National Park Authority was established by the Loch Lomond and the Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 (S.S.I. 2002/201). The functions of planning authorities under the Town and Country Planning (Scotland) Act 1997 in relation to local plans are transferred to and exercisable by the Loch Lomond and the Trossachs National Park Authority in terms of Article 7 of that Order.

(c) The Cairngorms National Park Authority was established by the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (S.S.I. 2003/1). The functions of planning authorities under the Town and Country Planning (Scotland) Act 1997 in relation to local plans are transferred to and exercisable by the Cairngorms National Park Authority in terms of Article 7 of that Order.

(2) The plan-making authority shall for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority may specify.

(3) The plan-making authority shall, if it considers it appropriate, take the opinion of the general public, and in doing so, shall take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 85C (considerations of overriding public interest), the plan-making authority shall give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site.

(5) A plan-making authority other than the Scottish Ministers shall provide such information as the Scottish Ministers may reasonably require—

- (a) to enable the Scottish Ministers to determine whether an assessment under paragraph (1) is required; or
- (b) for the purposes of an assessment under paragraph (1).

(6) This regulation does not apply in relation to a site which is a European site by reason only of regulation 10(1)(c)..

Considerations of overriding public interest

85C.—(1) If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site.

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) any other reasons of overriding public interest provided the competent authority has had regard to the opinion of the European Commission in satisfying themselves that there are such reasons.

(3) Where a plan-making authority, other than the Scottish Ministers, desires to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it shall submit a written request to the Scottish Ministers—

- (a) identifying the matter on which an opinion is sought; and
- (b) accompanied by any documents or information which may be required.

(4) The Scottish Ministers may seek the opinion of the European Commission and shall transmit the opinion to the plan-making authority.

(5) Where a plan-making authority other than the Scottish Ministers proposes to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for a European site, it shall notify the Scottish Ministers.

(6) Having notified the Scottish Ministers under paragraph (5), the authority in question shall not give effect to the land use plan before the end of the period of 21 days beginning with the day notified to it by the Scottish Ministers as that on which the notification was received by them, unless the Scottish Ministers notify the authority that it may do so.

(7) Without prejudice to any other power, the Scottish Ministers may give directions to the plan-making authority prohibiting it from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

Co-ordination for land use plan prepared by more than one planning authority

85D.—(1) This regulation applies where two or more planning authorities prepare a joint structure plan under section 5 or joint local plan under section 11 of the 1997 Planning Act.

(2) Nothing in regulation 85B(1) requires a planning authority to assess any implications of a joint structure plan or joint local plan which would be more appropriately assessed under that provision by another planning authority.

(3) The Scottish Ministers may issue guidance to planning authorities for the purposes of regulation 85B(1) as to the circumstances in which a planning authority may or should adopt the reasoning or conclusions of another planning authority as to whether a joint structure plan or a joint local plan—

- (a) is likely to have a significant effect on a European site, or
- (b) will adversely affect the integrity of a European site.

(4) The planning authorities involved shall have regard to any guidance issued under paragraph (3) in discharging their functions under regulation 85B(1).

(5) In determining whether a joint structure or local plan should be adopted under regulation 85C(1) a planning authority shall seek and have regard to the views of other planning authorities involved.

Compensatory measures

85E. Where in accordance with regulation 85C a land use plan is given effect, notwithstanding a negative assessment of the implications for a European site, the Scottish Ministers shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.”.

SCHEDULE 2

Regulation 25

Schedule 2A to be inserted in the Conservation (Natural Habitats, &c.)
Regulations 1994

“SCHEDULE 2A

Regulation 39(9)

EXCLUDED POPULATIONS OF CERTAIN SPECIES

<i>Common Name</i>	<i>Scientific Name</i>	<i>Excluded countries and areas</i>
Beaver, Eurasian	Castor fiber	Estonia, Finland, Latvia, Lithuania, Poland, and Sweden
Hamster, Common (or Black bellied)	Cricetus cricetus	Hungary
Wolf, Grey	Canis lupus	Estonia, Greece north of the 39th parallel, Latvia, Lithuania, Poland, Slovakia, Spain north of the Duero, and the reindeer management area in Finland as defined in paragraph 2 of Finnish Act No 848/90 of 14 September 1990 on reindeer management ^(a)
Lynx, Eurasian	Lynx lynx	Estonia
Viper, Seoane's	Vipera seoanni	Spain

NOTE: The common name or names given in the first column of this table are included by way of guidance only; in the event of dispute or proceedings, the common name or names must not be taken into account.”.

^(a) A copy of this Finnish Act can be obtained from Landscape and Habitats Division, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, Edinburgh EH6 6QQ.

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 flora and fauna (“the Habitats Directive”) (O.J. No. L 206, 22.7.1992, p.7). In so doing they amend the Conservation of Seals Act 1970, the Wildlife and Countryside Act 1981, the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”) and the Spring Traps Approval (Scotland) Order 1996. Regulation 2 provides that these Regulations come into force on the day after the day they are made.

Regulations 4 to 25 amend the 1994 Regulations as follows.

Regulation 6 adds further enactments to the list specified in respect of functions relevant to the marine environment which must be exercised so as to secure compliance with the Habitats Directive.

Regulation 7 provides that National Park authorities are relevant authorities in relation to marine areas and European marine sites.

Regulation 8 extends the meaning of “European site” to include all sites in Great Britain proposed under regulation 7(1) of the 1994 Regulations.

Regulation 9 inserts new regulation 37A which provides for surveillance of the conservation status of natural habitat types and species of Community interest. It also provides for the making of arrangements to ensure that the taking of certain species is compatible with their maintenance at favourable conservation status in certain circumstances.

Regulation 10 substitutes regulation 39 which extends the protection of certain wild animals. The additional measures are as follows—

- (a) it is an offence to deliberately or recklessly injure, or to harass a wild animal of a European protected species;
- (b) the circumstances in which disturbance of such an animal is an offence are extended;
- (c) the offences of sale or exchange or offering for sale or exchange certain animals or products derived from them is extended to all protected species listed in Annex IV(a) of the Directive;
- (d) the offences of possession, control or transport are similarly extended with effect from 1st May 2007;
- (e) a defence is provided in respect of species which are not native to Great Britain and which were taken in the wild where that was both lawful in, and (where the Habitats Directive applies) prior to the application of the Directive to, the place from which the animal was taken;
- (f) a specific defence is provided in relation to certain species in certain areas or which are not naturally occurring populations.

Regulation 11 substitutes regulation 40 which restricts additional defences available in relation to regulation 39 to mercy killing, tending of injured animals and acts carried out in relation to animals bred and lawfully held in captivity.

Regulation 12 amends regulation 41 to provide that it is an offence to use any indiscriminate means of taking or killing certain animals where that could cause certain effects.

Regulation 13 inserts new regulation 41A which provides for the Scottish Ministers to make arrangements for monitoring incidental capture and killing of certain animals, and for the carrying out of research and other conservation measures.

Regulation 14 substitutes regulation 43 which extends the protection of certain wild plants. Offences under this regulation now extend to all protected species listed in Annex IV(b) of the Habitats Directive (other than bryophytes). A new defence is provided in respect of species not native to Great Britain which were taken in the wild where that was both lawful in, and (where the Habitats Directive applies) prior to the application of the Habitats Directive to, the place from which the plant was taken.

Regulation 15 provides a new power to grant licences under regulation 44 of the 1994 Regulations for the taking or possession or control of animals or plants of a European protected species. Regulation 16 makes ancillary provision in relation to the conditions to be imposed in respect of such licences. Regulation 17 creates a new offence of breaching a condition imposed in respect of any licence granted on or after 15th May 2007.

Regulation 18 amends regulation 48(2) of the 1994 Regulations to supplement the requirement to provide information to competent authorities under that regulation.

Regulation 19 amends regulation 49(2)(b) of the 1994 Regulations to provide that decisions under that provision that there are imperative reasons of overriding public interest justifying a plan or project are only to be taken after having had regard to the opinion of the European Commission.

Regulation 20 inserts new regulation 84B which provides that the grant or variation of authorisations under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“the 2005 Regulations”) are subject to regulations 48-53 of the 1994 Regulations (requirement to consider effect on European site). Regulation 21 makes an amendment consequential upon the replacement of the consent regime under Part II of the Control of Pollution Act 1974 by the 2005 Regulations.

Regulation 22 inserts a new Part IVA (appropriate assessments for land use plans) into the 1994 Regulations, containing regulations 85A to 85E. Regulation 85A provides for interpretation of this new Part.

Regulation 85B provides that where a land-use plan is likely to have a significant effect on a European site in Great Britain which is not directly connected with or necessary to the management of the site, the plan-making authority must conduct an appropriate assessment of the implications for the site in view of that site’s conservation objectives, and undertake any necessary consultation.

The plan-making authority is to give effect to the plan only after having ascertained that it will not adversely affect the integrity of the site (regulation 85B(4)), unless it is satisfied that there are no alternative solutions and there are imperative reasons of overriding public interest as set out in regulation 85C. Where a planning authority proposes to give effect to a plan notwithstanding a negative assessment, it must notify the Scottish Ministers (regulation 85C(5)). The subsequent procedure is set out regulation 85C(6) and (7).

Regulation 85D is applicable where two or more planning authorities prepare a joint structure plan under section 5 or joint local plan under section 11 of the Town and Country Planning (Scotland) Act 1997.

In the event of a plan being given effect despite a negative assessment for reasons of overriding public interest, regulation 85E requires that any necessary compensatory measures are to be taken to ensure that the overall coherence of Natura 2000 is protected.

Regulation 24 inserts new regulation 104A, which makes specific provision for the application of the 1994 Regulations, to the Crown.

Regulation 26 amends the Conservation of Seals Act 1970 to indicate that there are restrictions under the Habitats Directive on methods of killing or taking seals, in addition to those contained in that Act.

Regulations 28 and 29 amend Schedules 5 and 8 to the Wildlife and Countryside Act 1981 to remove European protected species from the protection provided by sections 9 and 13 of that Act.

Regulation 31 makes savings provisions in respect of the offences under regulations 39 and 43 of the 1994 Regulations as they stood prior to that amendment by these Regulations of keeping or transporting wild animals or plants of a European protected species for the period up to and including 30th April 2007.

A Regulatory Impact Assessment has been prepared and placed in the library of the Scottish Parliament. A copy can be obtained from the Landscape and Habitats Division, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, Edinburgh, EH6 6QQ.

2007 No.

WILDLIFE

COUNTRYSIDE

The Conservation (Natural Habitats, &c.) Amendment
(Scotland) Regulations 2007

£3.50

© Crown Copyright 2006

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland