

STATUTORY INSTRUMENTS

1994 No. 2716

The Conservation (Natural Habitats, &c.) Regulations 1994

[^{F1}PART II

CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

[^{F1}European sites

Textual Amendments

- F1** Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3), 12.12.2014 in so far as not already in force) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

[^{F2}Duty to designate special areas of conservation

7.—(1) The Scottish Ministers must, having regard to the priorities established under regulation 8, designate as special areas of conservation such sites in Scotland as they consider to be of national importance.

(2) Sites of national importance are sites which contribute significantly to the objective in paragraph (3)(a) or the objective in paragraph (3)(b).

(3) The objectives referred to in paragraph (2) are—

- (a) the maintenance, or restoration, at favourable conservation status in their natural range of the natural habitat types listed in Annex I to the Habitats Directive or the species listed in Annex II to that Directive; and
- (b) the maintenance of biological diversity within the Atlantic biogeographic region.

(4) For animal species which range over wide areas, those sites determined to be of national importance must correspond to places within the natural range of such species, which is distinct in providing the physical or biological factors essential to their life and reproduction.

(5) For aquatic species which range over wide areas, such sites are to be determined to be of national importance only where there is a clearly identifiable area which is distinct in providing the physical and biological factors essential to their life and reproduction.

(6) In determining which sites are of national importance for the purposes of paragraph (1), the Scottish Ministers must—

- (a) apply the Annex III criteria;
- (b) make their determination only on the basis of relevant scientific information; and
- (c) have regard to the importance of the population of a species or area of a habitat found in the United Kingdom for the purpose of meeting the objectives in paragraph (3).

- (7) For the purposes of paragraph (6)(a), the Annex III criteria are to be construed as if—
 - (a) for “Community importance” there were substituted “national importance”;
 - (b) a reference to a “Member State” is to be taken to be a reference to the Scottish Ministers;
 - (c) for “continuous ecosystem situated on both sides of one or more internal Community frontiers” there were substituted “continuous ecosystem extending beyond the borders of the United Kingdom”; and
 - (d) for “the biogeographical regions concerned and/or for the whole of the territory referred to in Article 2” there were substituted “the Atlantic biogeographical region”;
- (8) In applying the Annex III criteria, the Scottish Ministers must—
 - (a) in relation to the application of stage 1 of those criteria, have regard to the advice of the appropriate nature conservation body; and
 - (b) in relation to the application of stage 2 of those criteria, have regard to the advice of the Joint Nature Conservation Committee.
- (9) In this regulation, “the Annex III criteria” means the criteria set out in Annex III to the Habitats Directive.]

Textual Amendments

F2 Reg. 7 substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, 8; 2020 c. 1, Sch. 5 para. 1(1)

[^{F3}Priorities for designating special areas of conservation

8.—(1) The Scottish Ministers must, in accordance with paragraph (2), establish priorities for designating as special areas of conservation such sites as they have determined to be sites of national importance.

- (2) Priorities for the purpose of paragraph (1) must be established in the light of—
 - (a) the importance of the sites for the maintenance at, or restoration to, a favourable conservation status of—
 - (i) a natural habitat type specified in Annex I to the Habitats Directive; or
 - (ii) a species specified in Annex II to the Habitats Directive;
 - (b) the importance of such sites for the coherence of the UK site network; and
 - (c) the threats of degradation or destruction to which the sites are exposed.]

Textual Amendments

F3 Reg. 8 substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, 8; 2020 c. 1, **Sch. 5 para. 1(1)**

Consultation as to inclusion of site omitted from the list

^{F4} 9.

Textual Amendments

- F4** Reg. 9 omitted (31.12.2020) by virtue of The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, 9; 2020 c. 1, Sch. 5 para. 1(1)

[^{F5}Special protection area: classification of sites

9A.—(1) The Scottish Ministers must classify as special protection areas such sites (including sites in the Scottish inshore region) as they consider necessary to ensure that the objective specified in paragraph (2) is attained.

(2) The objective referred to in paragraph (1) is that those sites across the United Kingdom’s territory which are most suitable in number and size for—

- (a) the conservation of species listed in Annex 1 to the Wild Birds Directive which naturally occur in that territory, and
- (b) the conservation of naturally occurring migratory species of birds not listed in Annex 1 which naturally occur in that territory,

are classified as special protection areas, in so far as they consist of sites in Scotland.

(3) The Scottish Ministers must make their decision as to the sites to be classified under paragraph (1) only on the basis of relevant scientific information and—

- (a) in the case of a site to be classified for the purpose mentioned in paragraph (2)(a), on the basis of criteria set out in Article 4(1) of the Wild Birds Directive, and
- (b) in the case of a site to be classified for the purpose mentioned in paragraph (2)(b), on the basis of criteria set out in Article 4(2) of that Directive.

(4) In this regulation—

^{F6}(a)

(b) “Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland.]

[^{F7}(5) In applying the criteria referred to in paragraphs (3)(a) and (b) in relation to any species, references in Articles 4(1) and 4(2) of the Wild Birds Directive to classifying the most suitable territories “in the geographical sea and land area where this Directive applies” are to be construed as referring to the most suitable territories in the United Kingdom’s territory, having regard to the importance of such territories for ensuring the survival and reproduction of that species in their area of distribution.]

Textual Amendments

- F5** Regs. 9A-9C inserted (6.4.2011) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2011 (S.S.I. 2011/155), regs. 1(1), 4
- F6** Reg. 9A(4)(a) omitted (31.12.2020) by virtue of The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, 10(2); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Reg. 9A(5) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, 10(3); 2020 c. 1, Sch. 5 para. 1(1)

[^{F5}Special protection area: notification of proposal

9B.—(1) The Scottish Ministers must if they propose to classify a site as a special protection area give to the appropriate nature conservation body—

- (a) notice of that proposal, and
- (b) an accompanying statement of the reasons for that proposal.

(2) The appropriate nature conservation body must on being given notice of a proposal, provide a copy of the proposal and the accompanying statement—

- (a) to such persons as the Scottish Ministers may direct, and
- (b) where, in their opinion, it is appropriate to do so to—
 - (i) any other person (including owners or occupiers of land or premises), and
 - (ii) every competent authority which exercises functions in relation to the site, or in relation to an area adjacent to the site.

(3) The appropriate nature conservation body must when they provide a copy of a proposal and accompanying document to any such person or authority specify the period of not less than 12 weeks (the “consultation period”) during which representations may be made to them with respect to the proposal by that person or authority.

(4) The appropriate nature conservation body must as soon as reasonably practicable after expiry of the consultation period provide to the Scottish Ministers a report (the “consultation report”)—

- (a) describing any representations made in that period, or
- (b) stating that no representations have been made.

(5) The Scottish Ministers must consider the consultation report when determining whether to classify a site as a special protection area.

(6) The Scottish Ministers may—

- (a) give guidance to the appropriate nature conservation body for the purpose of the exercise by them of functions under this regulation, and
- (b) vary or revoke a direction under paragraph (2)(a).

(7) The appropriate nature conservation body must have regard to any guidance under paragraph (6)(a) in discharging a function referred to in that paragraph.]

Textual Amendments

F5 [Regs. 9A-9C](#) inserted (6.4.2011) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2011 \(S.S.I. 2011/155\)](#), regs. 1(1), 4

[^{F5}Special protection area: hearing and representations in respect of a proposal

9C.—(1) The Scottish Ministers may give any person the opportunity of—

- (a) making written representations to, or
- (b) being heard by,

a person appointed by them for the purpose of deciding whether to classify a site as a special protection area.

(2) Any person being heard by the appointed person may—

- (a) be represented by another person,
- (b) call persons to give evidence,

- (c) make written representations before or at the hearing,
 - (d) put questions to any person who gives evidence at the hearing, including any person who gives expert evidence.
- (3) The Scottish Ministers must have regard to the report of an appointed person when deciding whether to so classify a site.]

Textual Amendments

F5 Regs. 9A-9C inserted (6.4.2011) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2011 \(S.S.I. 2011/155\)](#), regs. 1(1), 4

[^{F8}Management objectives of the UK site network

9D.—(1) The Scottish Ministers must, in co-operation with any other authority having a corresponding responsibility, manage, and where necessary adapt, the UK site network, so far as it consists of European sites in Scotland, with a view to contributing to the achievement of the management objectives of the UK site network.

- (2) The management objectives of the UK site network are—
- (a) to maintain at or, where appropriate, restore to a favourable conservation status in their natural range (so far as it lies in the United Kingdom’s territory, and so far as is proportionate)—
 - (i) the natural habitat types listed in Annex I to the Habitats Directive; and
 - (ii) the species listed in Annex II to that Directive whose natural range includes any part of the United Kingdom’s territory; and
 - (b) to contribute, in their area of distribution, to ensuring the survival and reproduction, and securing compliance with the requirements of Article 2 of the Wild Birds Directive for the purposes of the duty in regulation 3(1), of—
 - (i) species of birds listed in Annex I to the Wild Birds Directive which naturally occur in the United Kingdom’s territory; and
 - (ii) regularly occurring migratory species of birds not listed in that Annex which naturally occur in the United Kingdom’s territory.
- (3) In complying with the obligation in paragraph (1), the Scottish Ministers must have regard —
- (a) in relation to any European site which is not of a kind mentioned in regulation 10(1)(d), to the considerations mentioned in paragraph (4); and
 - (b) in relation to European sites of a kind mentioned in regulation 10(1)(d), to the considerations mentioned in paragraph (5).
- (4) The considerations referred to in paragraph (3)(a) are—
- (a) the importance of the sites for the maintenance at, or restoration to, a favourable conservation status, throughout their natural range, of the natural habitat types and species mentioned in paragraph (2)(a);
 - (b) the importance of the sites for the coherence of the UK site network; and
 - (c) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.
- (5) The considerations referred to in paragraph (3)(b) are—
- (a) the importance of the sites for ensuring the survival and reproduction of, and securing compliance with the requirements of Article 2 of the Wild Birds Directive for the purposes

- of the duty in regulation 3(1) in relation to, the species of birds mentioned in paragraph (2) (b), in their area of distribution;
 - (b) in the case of migratory species, the importance of their breeding, moulting and wintering areas and staging points along their migration routes;
 - (c) the importance of the sites for the coherence of UK site network; and
 - (d) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.
- (6) In paragraph (2)(a), “proportionate” means proportionate to the relative importance of—
- (a) the part of the natural range lying in the United Kingdom’s territory; and
 - (b) the part of the natural range lying outside the United Kingdom’s territory,
- for achieving a favourable conservation status.]

Textual Amendments

F8 Reg. 9D inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **11**; 2020 c. 1, Sch. 5 para. 1(1)

Meaning of “European site” in these Regulations

- 10.**—(1) In these Regulations a “European site” means—
- (a) a special area of conservation,
 - (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive [^{F9}before exit day],
 - ^{F10}(c)
 - (d) an area classified [^{F11}before exit day] pursuant to [^{F12}Article 4(1) or (2) of Council Directive 1979/409/EEC on the conservation of wild birds or] Article 4(1) or (2) of the Wild Birds Directive [^{F13}or classified after exit day under the retained transposing regulations][^{F14}, or]
 - ^{F15}(e) a site which before exit day has been proposed to the European Commission in accordance with Article 4(1) of the Habitats Directive until such time as—
 - (i) the site is designated as a special area of conservation under regulation 7 or under the equivalent provision in the other retained transposing regulations; or
 - (ii) the Scottish Ministers give notice of their intention not to designate the site, setting out the reasons for their decision, in accordance with regulation 112(3).]
 - ^{F16}(2)]

Textual Amendments

F9 Words in [reg. 10\(1\)\(b\)](#) inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **12(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F10 [Reg. 10\(1\)\(c\)](#) omitted (31.12.2020) by virtue of [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **12(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F11 Words in [reg. 10\(1\)\(d\)](#) inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **12(2)(c)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

- F12** Words in reg. 10(1)(d) inserted (14.9.2015) by The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2015 (S.S.I. 2015/249), regs. 1, **2(2)**
- F13** Words in reg. 10(1)(d) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **12(2)(c)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** Reg. 10(1)(e) and word inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **6(b)** (with regs. 20, 21)
- F15** Reg. 10(1)(e) substituted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **12(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)
- F16** Reg. 10(2) omitted (31.12.2020) by virtue of The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **12(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I1** Reg. 10 in force at 30.10.1994, see **reg. 1(2)**

Changes to legislation:

There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994, Cross Heading: European sites.