

STATUTORY INSTRUMENTS

1994 No. 2716

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

[^{F1}PART III **E+W+S**

PROTECTION OF SPECIES

[^{F1}Power to grant licences

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)

Grant of licences for certain purposes **E+W+S**

44.—(1) Regulations 39, 41 and 43 do not apply to anything done for any of the following purposes under and in accordance with the terms of a licence granted by the appropriate authority.

(2) The purposes referred to in paragraph (1) are—

- (a) scientific [^{F2}, research] or educational purposes;
- (b) ringing or marking, or examining any ring or mark on, wild animals;
- (c) conserving wild animals [^{F3}, including wild birds,] or wild plants or introducing them to particular areas;
- [^{F4}(ca) conserving natural habitats;]
- (d) protecting any zoological or botanical collection;
- (e) preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (f) preventing the spread of disease; or
- (g) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

[^{F5}(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).]

(3) The appropriate authority shall not grant a licence under this regulation unless they are satisfied—

- (a) that there is no satisfactory alternative, and
- (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

(4) For the purposes of this regulation “the appropriate authority” means—

- (a) in the case of a licence under any of sub-paragraphs (a) to (d) of paragraph (2), the appropriate nature conservation body; and

[^{F6}(b) in the case of any other licence granted under this regulation, the Scottish Ministers.]

[^{F7}(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.]

Textual Amendments

- F2** Word in reg. 44(2)(a) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **14(a)** (with regs. 20, 21)
- F3** Words in reg. 44(2)(c) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **14(b)** (with regs. 20, 21)
- F4** Reg. 44(2)(ca) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **14(e)** (with regs. 20, 21)
- F5** Reg. 44(2A)-(2C) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **15(a)**
- F6** Reg. 44(4)(b) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **15(b)**
- F7** Reg. 44(5) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **15(c)**

Commencement Information

- I1** Reg. 44 in force at 30.10.1994, see [reg. 1\(2\)](#)

[^{F8}Delegation of licence granting power: Scotland **S**

44A.—(1) The Scottish Ministers may delegate their functions in relation to licences under regulation 44 to the appropriate nature conservation body.

(2) A delegation may be, to any degree, general or specific and may in particular relate to—

- (a) a particular type of animal or plant,
- (b) a particular licence or type of licence, or
- (c) a particular area.

(3) Unless it specifies otherwise, a delegation relating to a particular licence (or type of licence) includes the power to modify or revoke the licence (or licences of that type) where granted before the delegation.

(4) A delegation is to be made by written direction.

(5) The Scottish Ministers may modify or revoke a direction under paragraph (4).

(6) The requirement on the Scottish Ministers under regulation 44(5) to take advice from the appropriate nature conservation body does not apply in the period when a direction under paragraph (4) has effect, in respect of any licence granted under the direction.

(7) Where a direction is revoked, any existing licence granted under the direction continues to have effect (unless the revoking direction provides otherwise).]

Textual Amendments

F8 Reg. 44A inserted (6.4.2011) by *The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2011* (S.S.I. 2011/155), regs. 1(1), 6

Licences: supplementary provisions **E+W+S**

45.—(1) [^{F9}Subject to the provisions of this regulation,] A licence under regulation 44—

- (a) may be, to any degree, general or specific;
- (b) may be granted either to persons of a class or to a particular person; and
- (c) may be subject to compliance with any specified conditions.

(2) For the purposes of a licence under regulation 44 the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person.

(3) A licence under regulation 44 may be modified or revoked at any time by the appropriate authority; but otherwise shall be valid for the period stated in the licence.

(4) A licence under regulation 44 which authorises any person to kill wild animals shall specify the area within which and the methods by which the wild animals may be killed and shall not be granted for a period of more than two years.

[^{F10}(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
- (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.]

(5) It shall be a defence in proceedings for an offence under section 8(b) of the Protection of Animals Act 1911(1) or section 7(b) of the Protection of Animals (Scotland) Act 1912(2) (which restrict the placing on land of poison and poisonous substances) to show that—

(1) 1911 c. 27; section 8 was amended by section 1 of the Protection of Animals (Amendment) Act 1927 (c. 27).

(2) 1912 c. 14.

- (a) the act alleged to constitute the offence was done under and in accordance with the terms of a licence under regulation 44, and
 - (b) any conditions specified in the licence were complied with.
- (6) The appropriate authority may charge for a licence under regulation 44 such reasonable sum (if any) as they may determine.

[^{F11}(7) Within two years from exit day, and thereafter within two years of the publication of the last such report, the Scottish Ministers must publish, in such form as they see fit, a report on licences granted under regulation 44 in the preceding two years.

- (8) The reports made under paragraph (7) must specify—
- (a) the species which are subject to the licence and the reason for granting it, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;
 - (b) in relation to any animal species, any means authorised for the capture or killing of the species and the reasons for the use of that means;
 - (c) when and where the licence was granted; and
 - (d) the supervisory measures taken to check that the required conditions of the licence have been complied with, any monitoring that has been carried out of compliance with the conditions of the licence, and the results of that monitoring.]

Textual Amendments

- F9** Words in [reg. 45\(1\)](#) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **16(a)**
- F10** [Reg. 45\(4A\)](#) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **16(b)**
- F11** [Reg. 45\(7\)\(8\)](#) inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **19**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I2** [Reg. 45](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

False statements made for obtaining licence **E+W+S**

46.—(1) A person commits an offence who, for the purposes of obtaining, whether for himself or another, the grant of a licence under regulation 44—

- (a) makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular, or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) A person guilty of an offence under this regulation is liable on summary conviction [^{F12}to imprisonment for a term not exceeding six months or] to a fine not exceeding level [^{F13}5] on the standard scale [^{F14}, or to both].

Textual Amendments

- F12** Words in [reg. 46\(2\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **15(a)** (with regs. 20, 21)

- F13** Word in [reg. 46\(2\)](#) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **15(b)** (with regs. 20, 21)
- F14** Words in [reg. 46\(2\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **15(c)** (with regs. 20, 21)

Commencement Information

- I3** Reg. 46 in force at 30.10.1994, see [reg. 1\(2\)](#)

[^{F15}Offence of breaching licence condition **E+W+S**

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.]]

Textual Amendments

- F15** [Reg. 46A](#) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **17**

Changes to legislation:

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