

POLICY NOTE

THE CONSERVATION (NATURAL HABITATS, &C.) AMENDMENT (SCOTLAND) REGULATIONS 2012

SSI 2012/228

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to the negative procedure.

Policy Objective

The objective is to further transpose the requirements of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ("the Birds Directive") (which codified Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds). This objective relates specifically to Articles 3(2), 4(4) (second sentence) and 10 of that Directive. The instrument will amend the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended).

The Instrument will have the following effects.

For Article 3(2) of the Directive:

- it places a new duty on the Scottish Ministers, Forestry Commission Scotland, local authorities, National Park authorities, Scottish Natural Heritage and the Scottish Environment Protection Agency to take such steps as they consider appropriate for the achievement of an objective which is defined in the instrument.
- the objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in Scotland.
- it lists the relevant enactments which provide functions to empower the delivery of the objective by the specified bodies.
- it allows due account to be given to economic and recreational requirements when considering which measures may be appropriate for the purpose of securing or contributing to the objective (as is expressly provided by the Birds Directive).
- it places an additional duty on the appropriate nature conservation body (i.e. Scottish Natural Heritage) to review from time to time the extent to which the objective has been met, set out the conclusions of the review in a report, include any recommendations for further action and send the report to the Scottish Ministers.
- after consultation with the appropriate nature conservation body, the Scottish Ministers must give guidance to Forestry Commission (Scotland), local authorities, National Park authorities and the Scottish Environment Protection Agency to

facilitate the determination by those bodies of the extent to which the diversity and area of habitat for wild birds is sufficient.

- The instrument also clarifies that provision to create Marine Protected Areas under Part 5 of the Marine (Scotland) Act 2012 can be used to achieve the objective of preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in Scotland, where applicable in the marine environment.

For the second sentence of Article 4(4) of the Directive:

- the Instrument requires that competent authorities use all reasonable endeavours to avoid pollution or deterioration of habitats of wild birds in Scotland.

For Article 10 of the Directive:

- the Instrument requires Scottish Ministers to take such steps as they consider necessary to encourage research and scientific work.

Consultation

It has not been necessary to consult on the Instrument. It represents established policy and clarifies existing responsibilities.

Impact Assessments

There are no equality impact issues.

Financial Effects

The Minister for Environment and Climate Change confirms that no BRIA is necessary as the instrument will have no financial effect on the Scottish Government, local government or on business.

Scottish Government

Environment and Forestry Directorate

31 July 2012