

POLICY NOTE

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULES A1 AND 1A) (SCOTLAND) ORDER 2013

S.S.I. 2013/31

The Wildlife and Countryside Act 1981 (Variation of Schedules A1 and 1A) (Scotland) Order 2013 is made in exercise of the powers conferred by section 22(1)(a) of the Wildlife and Countryside Act 1981 (the “1981 Act”).

The instrument is subject to the negative procedure.

Introduction

Schedule A1 of the 1981 Act lists bird species whose nests are protected at all times from being taken, damaged, destroyed or otherwise interfered with, including outwith the breeding season. Schedule 1A of the 1981 Act lists those bird species which are protected from harassment. This Order adds bird species to those Schedules.

Background

These Schedules were inserted into the 1981 Act by the Nature Conservation (Scotland) Act 2004 (the “2004 Act”). The white-tailed eagle, or sea eagle, is currently the only species listed on these Schedules. During the passage of the 2004 Act, the then Scottish Executive indicated that a consultation would be undertaken with a view to adding other species to the schedules.

Section 22(1)(a) of the 1981 Act provides for the power to add species of birds to (or remove them from) these Schedules.

Policy Objectives and EU Obligations

Section 1(1)(ba) of the 1981 Act makes it an offence for any person intentionally or recklessly to take, damage, destroy or otherwise interfere with any nest habitually used by any wild bird included in Schedule A1, at any time other than while the nest is in use or being built. Section 1(1)(b) provides that it is an offence intentionally or recklessly to take, damage, destroy or otherwise interfere with the nest of any wild bird while that nest is in use or being built.

The policy objective in relation to section 1(1)(ba) and Schedule A1 is to provide protection to bird species that are considered to be at risk from deliberate or accidental destruction of nest sites. This protection is most relevant for species that typically use the same nest site or sites on a regular basis.

Section 1(5B) of the 1981 Act provides that it is an offence for any person intentionally or recklessly to harass any wild bird included in Schedule 1A.

The policy objective in relation to section 1(5B) and Schedule 1A is to provide protection to birds species who are considered to be at risk of harassment that is intended to prevent them breeding.

Schedules A1 and 1A provide further implementation of EU obligations. Article 5(b) of Directive 2009/147/EC on the conservation of wild birds requires Member States to prohibit the deliberate destruction or removal of, or damage to, the nests of wild birds, and Article 5(d) of the same Directive requires Member States to prohibit the deliberate disturbance of wild birds, particularly during the period of breeding and rearing.

Coming into Force

The Order comes into force on 16th March 2013.

Consultation

The Scottish Government undertook a consultation exercise to identify bird species which required additional protection afforded by listing on Schedules A1 and 1A of the 1981. The consultation opened on 20th November 2008 and closed on 28 February 2009.

The Scottish Government received 31 responses to the consultation, both from organisations and individuals.

Following the consultation, and in agreement with SNH, we propose to add the following species to the schedules.

Eagle, Golden	Add to Schedules A1 and 1A
Eagle, White-tailed	Remain on Schedules A1 and 1A
Harrier, Hen	Add to Schedule 1A only
Kite, Red	Add to Schedule 1A only

Business Regulatory Impact Assessment

A BRIA has not been produced for this instrument, as the instrument will not in itself, impose new regulatory burdens on business, charities or the voluntary sector. A copy of the Policy Note will be placed in the Scottish Parliament Information Centre.

Equality Impact Assessment

An EQIA has not been prepared for this Order as there are no equality impact issues.