

POLICY NOTE

The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2019

SSI 2019/

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 negative procedure.

Purpose of the instrument

The purpose of this instrument is to amend the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”) to so that the Scottish Ministers may authorise the appropriate statutory nature conservation body to establish and maintain the register of European sites. The instrument also provides that the duty to review decisions, consents or other authorisations in accordance with regulations 50 and 51 of the 1994 Regulations does not apply to certain marine licences.

Policy Objectives

The 1994 Regulations is the principal statutory instrument transposing the requirements of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) into domestic law for Scotland on land and out to 12 nautical miles. They also transpose certain elements of Directive 2009/147/EC on the conservation of wild birds (“the Wild Birds Directive”). The Habitats and Wild Birds Directives lay down rules for the protection and management of habitats and the protection and exploitation of species.

Duty to compile and maintain Register of European sites

The 1994 Regulations require the Scottish Ministers to establish and maintain a Register of European sites (“the Register”), to notify the appropriate nature conservation body of any additions or amendments to the Register and make the Register available for public inspection at all reasonable hours and free of charge. The Register has been maintained in hard copy form in the Scottish Government’s premises in Victoria Quay without any request for physical access in at least 10 years. Regulations 11 and 12 of the 1994 Regulations are amended so that the Scottish Ministers may authorise the appropriate nature conservation body (i.e. Scottish Natural Heritage (“SNH”)) to establish and maintain the Register.

SNH already collates and publishes the material contained in the Register (maps, data forms and citations where appropriate) in the “Sitelink” section of its website.

Provisions requiring the appropriate nature conservation body to notify landowners, local planning authorities and other persons as directed by the Scottish Ministers remain unchanged.

Marine licences: duty to review

Regulation 4 inserts a new regulation 53B into the 1994 Regulations and provides that the duty to review decisions, consents or other authorisations in accordance with regulations 50 (review of existing decisions and consents, &c.) and 51 (consideration on review) do not apply to certain marine licences. The new regulation means that the duty to review existing marine licences does not apply where certain conditions are met. For example, where the marine licence includes the construction, alteration or improvement of any works, the condition is that that construction, alteration or improvement has been completed. In the case of a licence relating to the construction, alteration or improvement of a generating station, the duty to review does not apply after the station is first operated. The duty to review still applies to marine licences where the conditions outlined in the new regulation are not met, so a review of the marine licence would still be required where work is ongoing or not yet started.

There are existing exemptions for other regimes. For example, regulation 55 of the 1994 Regulations provides that the duty to review applies to any planning permission or deemed planning permission except where certain conditions are satisfied, including where the development to which the permission related has been completed.

Currently, when new sites are designated, there is a requirement to review all existing marine licences for plans or projects likely to have a significant effect on the site, regardless of whether the work was already completed. This approach places unnecessary regulatory burden on Scottish Ministers for no environmental benefit.

Consultation

There has been no formal public consultation regarding this instrument. We have advised relevant stakeholders regarding the rationale for these amendments.

Impact Assessments

An Equality Impact Assessment was not required as the amendments do not impact people directly or indirectly.

Financial Effects

The Cabinet Secretary for Environment, Climate Change and Land Reform confirms that no BRIA is necessary.

Scottish Government
Marine Scotland

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