

POLICY NOTE

THE CONSERVATION (NATURAL HABITATS, &C.) AMENDMENT (SCOTLAND) REGULATIONS 2019

S.S.I. 2019/64

The above instrument was made under section 2(2) of the European Communities Act 1972.

The instrument is subject to the negative procedure.

Policy objectives

Scottish Ministers announced on 24 November 2016 that the beaver populations in Knapdale in Argyll and in the Tay and Earn catchments can remain in Scotland, subject to satisfactory completion of a Strategic Environmental Assessment (SEA) and a Habitats Regulations Assessment (HRA). The intention was that beavers in Scotland would be given protection under the law as a European Protected Species (EPS) as soon as is practicable after completion of the Assessment processes.

The Order adds the Eurasian or European beaver (*Castor fiber*), to Schedule 2 of the Conservation (Natural Habitats, &c.) Regulations 1994. Schedule 2 lists those species that have European Protected Species status. The species that are currently listed on Schedule 2 are

Bats, Horseshoe (all species) *Rhinolophidae*

Bats, Typical (all species) *Vespertilionidae*

Butterfly, Large Blue *Maculinea arion*

Cat, Wild *Felis silvestris*

Dolphins, porpoises and whales (all species) *Cetacea*

Dormouse *Muscardinus avellanarius*

Lizard, Sand *Lacerta agilis*

Newt, Great Crested (or Warty) *Triturus cristatus*

Otter, Common *Lutra lutra*

Snake, Smooth *Coronella austriaca*

Sturgeon *Acipenser sturio*

Toad, Natterjack *Bufo calamita*

Turtles, Marine *Caretta caretta*, *Chelonia mydas*, *Lepidochelys kempii*, *Eretmochelys imbricate*,
Dermochelys coriacea

Beavers are currently not afforded any protection. Beavers are within their natural range in Scotland and as such, they are entitled to protection under Article 12 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”). This legislation is therefore necessary to comply with the Habitats Directive. By adding beavers to Schedule 2 of the Conservation (Natural Habitats, &c.) Regulations 1994, and giving them European protected species status, it will be an offence to deliberately or recklessly:

- capture, injure or kill such an animal
- harass an animal or group of animals
- disturb an animal while it is occupying a structure or place used for shelter or protection

- disturb an animal while it is rearing or otherwise caring for its young
- obstruct access to a breeding site or resting place, or otherwise deny an animal use of a breeding site or resting place
- disturb an animal in a manner or in circumstances likely to significantly affect the local distribution or abundance of the species
- disturb an animal in a manner or in circumstances likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young
- disturb an animal while it is migrating or hibernating

It is an offence of strict liability to damage or destroy a breeding site or resting place of such an animal. These sites and places are protected even when the animal isn't present.

Legislative Background

The Order is made under section 2(2) of the European Communities Act 1972.

Consultation

As required by Section 16(2) of the Environmental Assessment (Scotland) Act 2005, the Scottish Government consulted on the documents relating to the Strategic Environmental Assessment Report. The consultation on Citizen Space opened on 12 December 2017 and closed on 6 March 2018. The Scottish Government received 533 responses to this consultation, both from organisations (39) and individuals (494). The Analysis of Consultation Responses Report was published on 17 October 2018 which highlighted that the Strategic Environmental Assessment Environmental Report had correctly identified potential impacts and appropriate mitigation measures regarding the reintroduction of beavers to Scotland.

Impact Assessments

A Strategic Environmental Assessment (SEA) and the Habitats Regulations Appraisal (HRA) were carried out in May 2017. The SEA assessed the impact on protected sites that could be affected by beavers. It concluded that the impacts were acceptable provided appropriate mitigation was put in place. The SEA also concluded beaver impacts were manageable. The HRA assessed the potential negative effects beavers may have on Natura sites. The HRA concluded that adverse effects will be avoided on the integrity of 34 European sites within the Beaver Policy Area taking into account the current range of mitigation techniques which are available. Regarding 47 of the 67 qualifying interests affected it was concluded that mitigation measures would be required to avoid effects on site integrity. There were no Natura sites where it was concluded there would be an adverse effect on their integrity.

Business Regulatory Impact Assessment (BRIA)

A BRIA has been prepared for this Order and has been placed in the Scottish Parliament Information Centre.

Equalities impact assessment

There are no equality impact issues.

Scottish Government
Environment and Forestry Directorate

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