

REGULATORY IMPACT ASSESSMENT – TECHNICAL AMENDMENTS TO THE CONSERVATION (NATURAL HABITATS & c.) REGULATIONS 1994

Purpose

The United Kingdom is subject to obligations under the EU Directives on Wild Birds (79/409/EEC) and Habitats (92/43/EEC) relating to the identification of nature conservation sites of European importance, and to ensuring that effective measures are taken for the protection of threatened species and habitats. These requirements were transposed through the UK Conservation (Natural Habitats &c.) Regulations 1994 ("the Regulations").

The aim of the proposals is to enhance the transposition of these Directives through amendments to the Regulations to provide greater clarity and legal certainty and ensure the continued protection of European sites and species. As part of this, the proposals also aim to formally extend the improved site protection and management measures proposed in Chapter 3 and Schedule 3 of the draft Nature Conservation (Scotland) Bill to the Natura 2000 network of European sites.

This may have implications for owners/occupiers of affected land, including members of the public, individuals affected by the species protection proposals, Scottish Natural Heritage (SNH) as the statutory nature conservation agency, local authorities, statutory undertakers and public bodies.

Assessment of Risk

Failure to enhance the current arrangements for the protection of habitats and species could have effects on the quality of the natural environment in Scotland. There is a risk that some of the country's most important wildlife sites and species could suffer a decline in condition leading to a loss of biodiversity.

Options

There are no other practicable non-regulatory options for the better transposition of the Habitats Directive obligations in domestic legislation.

To do nothing to improve implementation of the Habitats Directive in Scotland would leave legislation short of the Directive's requirements.

Costs

As most of the legislative proposals are already being followed under general obligations and administrative practices, they are unlikely to significantly add to current burdens or create additional financial implications. SNH will need to extend some of its existing monitoring programmes, in particular to improve its coverage of the incidental capture

and killing of European Protected Species, but this aspect apart, it is not expected that the proposals will have significant implications.

The Scottish Executive's policy is that the Natura 2000 network of protected sites should also normally have protection as sites of special scientific interest (SSSIs) under the Wildlife and Countryside Act 1981. As such, they are already subject to the provisions of this Act, and those proposed in the draft Nature Conservation (Scotland) Bill would also normally apply to Natura sites. The proposals seek to clarify this situation and therefore land managers of protected sites should not incur any additional costs as a consequence of these proposals beyond those contained within the prevention of deterioration and damage provisions of the draft Nature Conservation (Scotland) Bill.

It is envisaged that the proposed provision for Land Management Orders contained within the draft Nature Conservation (Scotland) Bill will only be used as a last resort in situations where negotiation over changes to existing land management have not proved successful. The Scottish Executive expect that referral of appeals and disputes to the Scottish Land Court will be relatively infrequent, with SNH and land managers encouraged to reach resolution through mediation. Only those disputes which cannot be settled through these routes would be referred to the Land Court, and it is not thought that any financial implications would be significant.

The licensing arrangements which currently apply in cases where European Protected Species are present on any site which is proposed for development have been the subject of interim Scottish Executive guidance which was issued to local authorities in October 2001. This guidance sought to make planning authorities more aware of their responsibilities under the Habitats Regulations and to alert them of proposed changes to the licensing system. We anticipate that there will be additional costs for local authorities and businesses, however it is not possible at this stage to identify these costs. Based on experience drawn from the interim guidance the Scottish Executive now invites comments on the likely impact that these proposed amendments may have.

Benefits

These legislative proposals are important to the effective achievement of the Scottish Executive's nature conservation policy aims in Scotland. They will provide enhanced means for securing a significant improvement in the conservation status of sites and species.

In addition by placing current general obligations and administrative practice on a clear legislative footing, they will provide greater clarity, certainty and consistency about the rights and responsibilities of all relevant parties concerning European protected sites and species.

Consultation

There will be public consultation on the proposals for amended regulations and the draft regulatory appraisal. The prevention of site deterioration and damage provisions within the draft Nature Conservation (Scotland) Bill are proposed to extend to European sites, and as such this aspect of that particular consultation will apply equally to these proposals.

Enforcement, Sanctions and Monitoring

SNH will continue to seek appropriate protection for designated nature conservation sites, as well as playing a key role in monitoring and reporting on their condition. As part of these efforts, SNH have introduced a more rigorous condition monitoring regime to help identify damage affecting SSSIs and Natura sites and opportunities where altered management in partnership with local interests may be necessary.

Review

The operation of these Regulations will be monitored by SNH and the Scottish Executive. Advice will be sought from SNH on the extent to which they secure the desired benefits for wildlife, and the need for further reviews in future.

**Scottish Executive
Wildlife & Habitats Unit**