

NATIONAL ASSEMBLY FOR WALES

STATUTORY INSTRUMENTS

2004 No. (W.)

WILDLIFE, WALES

COUNTRYSIDE, WALES

The Conservation (Natural Habitats, &c.) (Amendment) (Wales) Regulations 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Wales, amend the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”) which make provision for implementing Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (O.J. No. L206, 22.7.92, p.7), amended by the Act of Accession to the European Union of Austria, Finland and Sweden (O.J. No. C241, 29.8.94) and by Council Directive 97/62/EC (O.J. No. L305, 8.11.97, p.42).

The Regulations insert into the 1994 Regulations a new regulation 37A which imposes upon the National Assembly for Wales (to whom the functions of the Secretary of State under the 1994 Regulations have been transferred in relation to Wales) a duty to make arrangements for the surveillance of the conservation status of natural habitat types of Community interest and species of Community interest. They also insert a new regulation 41A, imposing a duty on the National Assembly to make arrangements to monitor the incidental capturing and killing of animals of a European protected species.

Regulation 39(1)(d) of the 1994 Regulations, which prohibits damage and destruction of the breeding sites and resting places of animals of a European protected species, is amended to prohibit, in addition, acts which result in the deterioration of such sites or places. Regulation 39(2) is amended to make it an offence to trade in animals belonging to protected species which originate in any Member State as well as animals

belonging to protected species native to Great Britain. A similar amendment is made to regulation 43(2) in relation to the offence of trading in wild plants. The Regulations create a new defence to regulation 39(2) in relation to animals lawfully taken or killed before 10 June 1994, replacing regulation 39(4). A similar change is made in regulation 43 (protection of wild plants).

Regulation 40 of the 1994 Regulations, which contains exceptions from regulation 39, is amended to secure that the exceptions at regulation 40(1), (2) and (3)(a) and (b) apply only where there is no satisfactory alternative and the act will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range. Regulation 40(3)(c) is replaced by regulation 40(3B), and this exception applies only where the person seeking to rely on it was not aware and could not reasonably have been expected to be aware of the effect of his act on an animal of a protected species; a similar amendment is also made in regulation 43(4) (protection of wild plants). Regulation 40(5) to (7) is revoked.

Regulation 41 of the 1994 Regulations is amended to impose a duty on the National Assembly to review the lists of prohibited modes of taking, killing and transport in paragraphs (3) to (5).

Regulation 49(2)(b) of the 1994 Regulations (considerations of overriding public interest) is amended to provide that where a site hosts a priority natural habitat or a priority species, the reasons which may constitute imperative reasons of overriding public interest under that subsection are those reasons which, in the view of the National Assembly, having considered the opinion of the European Commission, are imperative reasons of overriding public interest.

The Regulations also make other minor or consequential amendments.

2004 No. (W.)

WILDLIFE, WALES

COUNTRYSIDE, WALES

**The Conservation (Natural
Habitats, &c.) (Amendment)
(Wales) Regulations 2004**

Made 2004

Coming into force 19 July 2004

The National Assembly for Wales, being designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to the conservation of natural habitats and of wild fauna and flora, in exercise of the powers conferred upon it by the said section 2, hereby makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) (Amendment) (Wales) Regulations 2004 and come into force on 19 July 2004.

(2) In these Regulations, “the 1994 Regulations” (“*Rheoliadau 1994*”) means the Conservation (Natural Habitats, &c.) Regulations 1994⁽³⁾.

(3) These Regulations apply in relation to Wales.

Amendment of the 1994 Regulations

2.The 1994 Regulations are amended as follows.

3. After regulation 37 (nature conservation policy in planning contexts) insert the following regulation—

⁽¹⁾ S.I. 2002/248.

⁽²⁾ 1972 c.68.

⁽³⁾ S.I. 1994/2716.

“Surveillance of conservation status of habitats and species

37A. The Secretary of State shall make arrangements for the surveillance of the conservation status of natural habitat types of Community interest and species of Community interest, and in particular priority natural habitat types and priority species.”.

4. In regulation 39 (protection of wild animals of European protected species)–

- (a) in paragraph (1)(d) after “destroy” insert “, or carry out an act which results in the deterioration of,”;
- (b) in paragraph (2) for “wild animal of a European protected species” substitute “animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive”; and
- (c) for paragraph (4) substitute the following paragraph–

“(4) A person shall not be guilty of an offence under paragraph (2) if he shows that the animal or other thing in question was lawfully taken or killed before 10th June 1994.”.

5. In regulation 40(4) (exceptions from regulation 39)–

- (a) omit paragraph (3)(c);
- (b) after paragraph (3) insert the following paragraphs–

“(3A) Paragraphs (1), (2) and (3)(a) and (b) only apply where–

- (a) there is no satisfactory alternative to the taking, killing, disturbance, destruction, damage or act; and
- (b) the taking, killing, disturbance, destruction, damage or act will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

(3B) A person shall not be guilty of an offence under paragraph (1) of regulation 39 by reason of any act made unlawful by that paragraph if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided, and he was not aware, and could not reasonably be expected to be aware, of the effect of his act on an animal

(4) Regulation 40 was amended by S.I. 1996/525.

of a species listed in Annex IV(a) to the Habitats Directive.”;

(c) in paragraph (4) omit “or (3)(c)”; and

(d) omit paragraphs (5) to (7).

6. In regulation 41 (prohibition of certain methods of taking or killing wild animals) after paragraph (6) insert the following paragraph–

“(7) The Secretary of State shall from time to time review the prohibited means of taking or killing set out in paragraphs (3) and (4) and the prohibited modes of transport set out in paragraph (5).”

7. After regulation 41 insert the following regulation–

“Monitoring incidental capturing and killing

41A. The Secretary of State shall make arrangements for the monitoring of the incidental capturing and killing of animals of a European protected species.”.

8. In regulation 43 (protection of wild plants of European protected species)–

(a) in paragraph (2) for “wild plant of a European protected species” substitute “plant which is taken in the wild and is of a species listed in Annex IV(b) to the Habitats Directive”;

(b) in paragraph (4) at the end insert “and he was not aware, and could not reasonably have been expected to be aware, of the effect of his act on a plant of a European protected species”;

(c) for paragraph (5) substitute the following paragraph–

“(5) A person shall not be guilty of an offence under paragraph (2) if he shows that the plant or other thing in question was lawfully taken before 10th June 1994.”.

9. In paragraph (2)(b) of regulation 49 (considerations of overriding public interest) for “the opinion of the European Commission” substitute “the Secretary of State’s view, having considered the opinion of the European Commission”.

References to the 1994 Regulations in the Transfer of Functions Order

10. References to the 1994 Regulations in the National Assembly for Wales (Transfer of Functions)

Order 1999⁽⁵⁾ are to be treated as references to those Regulations as amended by these Regulations.
Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽⁶⁾

Date

The Presiding Officer of the National Assembly

⁽⁵⁾ S.I. 1999/672.
⁽⁶⁾ 1998 c.38.