EXECUTIVE NOTE

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (EXCEPTIONS TO SECTION 14) (SCOTLAND) ORDER 2012

SSI 2012/173

1. The above instrument is made in exercise of the powers conferred by sections 14(2B) and (2D)(a), (b) and (e) of the Wildlife and Countryside Act 1981(the 1981 Act), as amended by the Wildlife and Natural Environment (Scotland) Act 2011 (the 2011 Act).

2. The instrument is subject to negative procedure.

Policy Objectives

3. This instrument forms part of an implementation package, to be laid before Parliament alongside other instruments made pursuant to the provisions relevant to the *Non-native species etc* part of the 2011 Act. Separate Executive Notes have been drafted for each instrument.

Plants

4. Section 14(2) of the 1981 Act (as substituted by section 14(2)(a) of the 2011 Act) creates the offence of planting, or otherwise causing to grow, any plant in the wild at a place outwith its native range. Section 14(2B)(b) enables the Scottish Ministers to specify by Order types of plants to which the offence provisions do not apply.

5. This Order provides for certain species of plant to be exempt from the Section 14(2) offence of planting, or causing a plant to grow, in the wild outwith its native range. The plants that are listed include those that provide an economic benefit, those that support biodiversity and those that provide a cultural benefit. Those benefits are considered alongside any risk that might be posed by the species in terms of invasiveness.

6. None of the plant species listed in this Order were originally listed in Schedule 9 (animals and plants to which section 14 applies) to the 1981 Act, with the effect that there was previously no restriction on the planting of those plant species. Therefore, this Order simply preserves the status quo by ensuring that it continues not to be an offence to plant, or cause to grow, in the wild at a place outwith its native range the plant species listed in Part 2 of the Schedule to the Order.

Angling – catch and release of fish outwith their native range

7. Section 14(1)(a) of the 1981 Act (as substituted by section 14(2)(a) of the 2011 Act) makes it an offence to release any animal to a place outwith its native range. Section 14(2B)(a) enables the Scottish Ministers to specify by Order types of animals to which the offence provisions do not apply.

8. This Order provides for fish in certain circumstances to be exempt from the section 14(1)(a)(i) offence of releasing an animal to a place outwith its native range. Much of the angling in Scotland involves the catch and release of fish that are outwith their native range. This Order allows that to continue by exempting from the offence of releasing an animal outwith its native range any fish caught by rod and line, but only where the release takes place-:

- at the same location where the fish was caught; and
- on the same day that the fish was caught.

Consultation

9. In exercising the powers given to them under Section 14(2B) and (2D) of the 1981 Act the Scottish Ministers are required to consult Scottish Natural Heritage (SNH) and any other person appearing to them to have an interest in accordance with section 26(4A) of the 1981 Act (as inserted by section 17(6)(c) of the 2011 Act).

10. In making this instrument the Scottish Ministers have consulted SNH. They have also consulted others appearing to them to have an interest including Plantlife, ConFor and Scottish Land and Estates.

Equalities Impact Assessments

11. There are no equalities impact issues.

Financial Effects

12. A Regulatory Impact Assessment was included in the consultation for the 2011 Act outlining the costs associated with non-native species issues and specifically referring to the use of exemptions for legitimate and beneficial practices that would run alongside a presumption against release.

Directorate for Environment and Forestry
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