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STATUTORY INSTRUMENTS

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**2010 No. 490**

**The Conservation of Habitats and Species Regulations 2010**

**PART 3**

**PROTECTION OF SPECIES**

*Protection of animals*

**European protected species of animals**

**40.**—(1) Schedule 2 (European protected species of animals) lists those species of animals listed in Annex IV(a) to the Habitats Directive which have a natural range which includes any area in Great Britain.

(2) References in this Part to a “European protected species” of animal are to any of those species.

**Protection of certain wild animals: offences**

**41.**—(1) A person who—

- (a) deliberately captures, injures or kills any wild animal of a European protected species,
- (b) deliberately disturbs wild animals of any such species,
- (c) deliberately takes or destroys the eggs of such an animal, or
- (d) damages or destroys a breeding site or resting place of such an animal,

is guilty of an offence.

(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—

- (a) to impair their ability—
  - (i) to survive, to breed or reproduce, or to rear or nurture their young, or
  - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate;  
or
- (b) to affect significantly the local distribution or abundance of the species to which they belong.

(3) It is an offence for any person—

- (a) to be in possession of, or to control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

anything to which this paragraph applies.

(4) Paragraph (3) applies to—

- (a) any live or dead animal or part of an animal—
    - (i) which has been taken from the wild, and
    - (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and
  - (b) anything derived from such an animal or any part of such an animal.
- (5) Paragraphs (1) and (3) apply regardless of the stage of the life of the animal in question.
- (6) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is presumed to have been a wild animal.
- (7) In any proceedings for an offence under paragraph (3), where it is alleged that an animal or a part of an animal was taken from the wild, it is presumed, unless the contrary is shown, that that animal or part of an animal was taken from the wild.
- (8) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.
- (9) Guidance as to the application of the offences in paragraph (1)(b) or (d) in relation to particular species of animals or particular activities may be published by—
- (a) the appropriate authority; or
  - (b) the appropriate nature conservation body, with the approval of the appropriate authority.
- (10) In proceedings for an offence under paragraph (1)(b) or (d), a court must take into account any relevant guidance published under paragraph (9).
- (11) In deciding upon the sentence for a person convicted of an offence under paragraph (1)(d), the court must in particular have regard to whether that person could reasonably have avoided the damage to or destruction of the breeding site or resting place concerned.

#### **Protection of certain wild animals: defences**

- 42.**—(1) A person (“P”) is not guilty of the offence under regulation 41(1)(a) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 41(3)(a) or (b), if P shows that the act in question—
- (a) was in relation to an animal that had been disabled otherwise than by P’s unlawful act; and
  - (b) was done solely for one or both of the purposes of—
    - (i) tending it and releasing it when no longer disabled, or
    - (ii) releasing it after it had been tended.
- (2) A person (“P”) is not guilty of an offence under regulation 41(1)(a) or 41(3)(a) or (b) if P shows that the act in question—
- (a) was in relation to an animal that had been seriously disabled otherwise than by P’s unlawful act and that there was no reasonable chance of its recovering; and
  - (b) was done solely for one or both of the purposes of—
    - (i) ending the animal’s life, or
    - (ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.
- (3) A person is not guilty of the offence under regulation 41(1)(a) of deliberately injuring a wild animal of a European protected species if that person shows that this was done solely—
- (a) for the purpose of taking a sample by virtue of any of the sampling provisions; or

- (b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of an offence specified in paragraph (11) (wherever the offence was committed).
- (4) A person is not guilty of an offence under regulation 41(3)(a) or (b) if that person shows that the act in question was done solely for one or more of the purposes of—
  - (a) investigating whether an offence specified in paragraph (11) is being or has been committed (wherever the offence was committed);
  - (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or
  - (c) giving effect to an order under any of the forfeiture provisions.
- (5) Subject to paragraph (6), a person who shows that the animal or part of the animal in question, or the animal or part of the animal from which the thing in question is derived, was lawfully taken from the wild is not guilty of an offence under regulation 41(3).
- (6) The defence in paragraph (5) does not apply—
  - (a) in respect of the offences in regulation 41(3)(a) and (b) if—
    - (i) the animal or part in question is an animal, or part of an animal, of a European protected species or of the species *Lacerta vivipara pannonica* (viviparous lizard) or *Lycaena dispar* (the large copper butterfly), or the thing in question is derived from such an animal, and
    - (ii) the animal, part or thing in question was in the defendant's possession or control, or transported by the defendant, for the purpose of sale or exchange; or
  - (b) in respect of the offences in regulation 41(3)(c) and (d), if the animal or part in question is an animal, or part of an animal, of any of the species referred to in sub-paragraph (a)(i), or the thing in question is derived from such an animal.
- (7) For the purposes of paragraph (5) an animal, or part of an animal, is treated as having been lawfully taken from the wild if—
  - (a) it was taken from the wild in the European territory of a member State, being territory to which the TFEU applies, without contravention of the law of that member State and before the implementation date; or
  - (b) it was taken from the wild elsewhere.
- (8) A person is not guilty of an offence under regulation 41(3) if that person shows that the animal or part of the animal, or the animal from which the thing in question is derived—
  - (a) is of a species listed in the second column of Schedule 3 (excluded populations of certain species) and was from a population occurring in a country or area which is specified in respect of that species in the third column of that Schedule;
  - (b) is of the species *Capra aegagrus* (wild goat) and was not from a naturally occurring population;
  - (c) is of the subspecies *Ovis gmelini musimon* (European mouflon) and was not from a naturally occurring population in Corsica or Sardinia; or
  - (d) is of the species *Coregonus oxyrhynchus* (houting) and either was from Finland or was not from an anadromous population.
- (9) The defences in paragraphs (1) to (4) do not apply where it is shown by the prosecution that the defendant's action did not satisfy the conditions in paragraph (10).
- (10) Those conditions are that—
  - (a) there was no satisfactory alternative; and

- (b) the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- (11) For the purposes of paragraphs (3)(b) and (4)(a) and (b), the specified offences are—
- (a) an offence under section 9(1) (protection of certain wild animals), 11(2) (prohibition of certain methods of killing or taking wild animals) or 17(3) (false statements made for obtaining registration or licence etc.) of the WCA 1981, or an offence under section 18 of that Act (attempts to commit offences etc.) which relates to an offence under section 9 or 11;
  - (b) an offence under the following provisions of these Regulations—
    - (i) regulation 41 (protection of certain wild animals: offences),
    - (ii) regulation 43 (prohibition of certain methods of capturing or killing wild animals),
    - (iii) regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants), or
    - (iv) regulation 116 (attempts and possession of means of committing offence), where that offence relates to an offence under regulation 41 or 43;
  - (c) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
  - (d) an offence under regulation 39(4) (protection of wild animals listed in Annex IV(a) to the Habitats Directive), 41 (prohibition of certain methods of capturing or killing wild animals) or 51 (false statements made for obtaining licence) of the 2007 Regulations, an offence of attempting to commit an offence under regulation 39 or 41 of those Regulations, or an offence under regulation 64 of those Regulations (possession of means of committing offence) which relates to an offence under regulation 39 or 41 of those Regulations.
- (12) For the purposes of any proceedings for an offence under regulation 41(3), the common names given in parentheses in paragraphs (6) and (8) are to be disregarded.

### **Prohibition of certain methods of capturing or killing wild animals**

- 43.—**(1) This regulation applies in relation to the capturing or killing of a wild animal—
- (a) of any of the species listed in Schedule 4 (which lists those species listed in Annex V(a) to the Habitats Directive, and to which Article 15 of that Directive applies, which have a natural range which includes any area of Great Britain); or
  - (b) of a European protected species, where the capturing or killing of such animals is permitted in accordance with these Regulations.
- (2) It is an offence to use for the purpose of capturing or killing any such wild animal—
- (a) any of the means listed in paragraph (3) or (4);
  - (b) any form of capturing or killing from the modes of transport listed in paragraph (5); or
  - (c) any other means of capturing or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal listed in Schedule 4 or any European protected species of animal.
- (3) The prohibited means of capturing or killing mammals are—

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(1) Relevant amendments were made to section 9 by the Countryside and Rights of Way Act 2000 (c. 37), paragraph 5(b) of Schedule 12.

(2) Relevant amendments were made to section 11 by the Wildlife and Countryside (Amendment) Act 1991 (c. 39), section 2.

(3) Section 17 was amended by the Countryside and Rights of Way Act 2000 (c. 37), Part 4 of Schedule 16.

(4) Regulation 39 was amended by S.I. 2009/7.

- (a) the use of blind or mutilated animals as live decoys;
  - (b) tape recorders;
  - (c) electrical and electronic devices capable of killing or stunning;
  - (d) artificial light sources;
  - (e) mirrors and other dazzling devices;
  - (f) devices for illuminating targets;
  - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
  - (h) explosives;
  - (i) nets which are non-selective according to their principle or their conditions of use;
  - (j) traps which are non-selective according to their principle or their conditions of use;
  - (k) crossbows;
  - (l) poisons and poisoned or anaesthetic bait;
  - (m) gassing or smoking out;
  - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
- (4) The prohibited means of capturing or killing fish are—
- (a) poison;
  - (b) explosives.
- (5) The prohibited modes of transport are—
- (a) aircraft;
  - (b) moving motor vehicles.
- (6) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.