
STATUTORY INSTRUMENTS

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—

(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.

Protection of plants

European protected species of plants

44.—(1) Schedule 5 (European protected species of plants) lists those species of plants listed in Annex IV(b) 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 plant are to any of those species.

Protection of certain wild plants: offences

45.—(1) It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

- (2) 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.

(3) Paragraph (2) applies to—

(a) any live or dead plant or part of a plant—

(i) which has been taken in the wild, and

(ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV(b) to the Habitats Directive; and

(b) anything derived from such a plant or any part of such a plant.

(4) Paragraphs (1) and (2) apply regardless of the stage of the biological cycle of the plant in question.

(5) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the plant in question is presumed to have been a wild plant.

(6) In any proceedings for an offence under paragraph (2), where it is alleged that a plant or a part of a plant was taken in the wild, it is presumed, unless the contrary is shown, that that plant or part of a plant was taken in the wild.

(7) 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.

Protection of certain wild plants: defences

46.—(1) A person is not guilty of the offence under regulation 45(1) of picking or cutting a wild plant of a European protected species if 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 (6) (wherever the offence was committed).

(2) A person is not guilty of an offence under regulation 45(2)(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 (6) 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.

(3) Subject to paragraph (4), a person who shows that the plant or part of the plant in question, or the plant or part of the plant from which the thing in question is derived, was lawfully taken in the wild, is not guilty of an offence under regulation 45(2).

(4) The defence in paragraph (3) does not apply—

(a) in respect of the offences in regulation 45(2)(a) and (b) if—

(i) the plant or part in question is a plant, or part of a plant, of a European protected species, or the thing in question is derived from such a plant, and

(ii) the plant, 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 45(2)(c) and (d), if the plant or part in question is a plant, or part of a plant, of a European protected species, or the thing in question is derived from such a plant.

(5) For the purposes of paragraph (3) a plant, or part of a plant, is treated as having been lawfully taken in the wild if—

- (a) it was taken in 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 in the wild elsewhere.
- (6) For the purposes of paragraphs (1)(b) and (2)(a) and (b), the specified offences are—
- (a) an offence under section 13 (protection of wild plants) or 17(5) (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 13;
 - (b) an offence under the following provisions of these Regulations—
 - (i) regulation 45 (protection of certain wild plants: offences),
 - (ii) 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
 - (iii) regulation 116 (attempts and possession of means of committing offence), where that offence relates to an offence under regulation 45;
 - (c) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
 - (d) an offence under regulation 43 (offences relating to wild plants listed in Annex IV(b) to the Habitats Directive) or 51 (false statements made for obtaining licence) of the 2007 Regulations, an offence of attempting to commit an offence under regulation 43 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 43 of those Regulations.

Interpretation of Part 3

Interpretation of Part 3

47. In this Part—

- (a) “the 1997 Regulations” means the Control of Trade in Endangered Species (Enforcement) Regulations 1997(6);
- (b) “the forfeiture provisions” means—
 - (i) subsection (6) of section 21(7) (penalties, forfeitures etc.) of the WCA 1981,
 - (ii) regulation 122 (forfeiture) of these Regulations, or
 - (iii) regulation 11 (forfeiture) of the 1997 Regulations;
- (c) “the implementation date” means—
 - (i) where the relevant State became a member State before 10th June 1994, 10th June 1994, and
 - (ii) in any other case, the date on which the relevant State became a member State;
- (d) “relevant State” means the State in whose territory—
 - (i) the animal, or part of it, was taken from the wild, or
 - (ii) the plant, or part of it, was taken in the wild,

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

(6) S.I. 1997/1372, amended by S.I. 2005/1674, 2007/2952 and 2009/1773.

(7) A relevant amendment was made to section 21(6) by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), paragraph 73(1) of Schedule 11.

as the case may be;

- (e) “the sampling provisions” means—
 - (i) section 18C⁽⁸⁾ (Group 1 offences and licences: examining specimens and taking samples), 18E⁽⁹⁾ (Group 2 offences: examining specimens and taking samples) or 19XA⁽¹⁰⁾ (constables’ powers in connection with samples) of the WCA 1981,
 - (ii) regulation 113 (powers in relation to samples: constables) or 114 (powers in relation to specimens and samples: wildlife inspectors) of these Regulations,
 - (iii) paragraph (3) or (5) of regulation 9 (powers of entry) of the 1997 Regulations, or
 - (iv) paragraph (2) of regulation 56 (powers relating to specimens) of the 2007 Regulations; and
- (f) “the TFEU” means the Treaty on the Functioning of the European Union.

⁽⁸⁾ Section 18C was inserted by the 2006 Act, paragraph 1 of Schedule 5.

⁽⁹⁾ Section 18E was inserted by the 2006 Act (by the same provisions as inserted section 18C).

⁽¹⁰⁾ Section 19XA was inserted by the 2006 Act, paragraph 3 of Schedule 5, and amended by the Criminal Justice and Immigration Act 2008 (c. 4), paragraph 7 of Schedule 26.