
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2007 No.

**The Conservation (Natural Habitats, &c.)
Amendment (Scotland) Regulations 2007**

PART II

**AMENDMENTS TO THE CONSERVATION
(NATURAL HABITATS, &c.) REGULATIONS 1994**

14. Subject to regulation 31, for regulation 43 (protection of wild plants of European protected species) substitute—

“Protection of certain wild plants

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

(2) It is an offence for any person—

- (a) on or after 1st May 2007 to possess or control;
- (b) on or after 1st May 2007 to transport;
- (c) to sell or exchange; or
- (d) to offer for sale or exchange,

anything to which paragraph (3) applies.

(3) This paragraph 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 IV(b) to the Habitats Directive; and
- (b) anything derived from such a plant or part of such a plant.

(4) The offences in paragraphs (1) and (2) apply to all stages of the biological cycle of the plants to which they apply.

(5) Subject to paragraph (6), a person shall not be guilty of an offence under paragraph (2) if that person 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.

(6) The defence under paragraph (5) does not apply—

- (a) in the case of the offences in paragraph (2)(a) or (b) if—
 - (i) the plant in question is a plant of a European protected species, or the part or thing in question is derived from such a plant; and
 - (ii) the plant, part or thing in question was in the defender’s possession or control, or transported by the defender, for the purpose of sale or exchange;

(b) in the case of the offences in paragraph (2)(c) or (d) if the plant in question is a plant of a European protected species, or the part or thing in question is derived from such a plant.

(7) For the purposes of paragraph (5) a plant, or part of a plant, shall be 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 to which the Habitats Directive applies without contravention of the law of that member State and before the implementation date; or

(b) it was taken in the wild elsewhere without contravention of the law of the country or territory in which it was taken.

(8) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the provisions of this regulation shall be guilty of an offence.

(9) Unless the contrary is shown, in any proceedings—

(a) for an offence under paragraph (1), the plant in question shall be presumed to have been a wild plant; and

(b) for an offence under paragraph (2) (as the case may be)—

(i) the plant or part of the plant in question shall be presumed to have been taken in the wild; or

(ii) the part or thing in question shall be presumed to be from a plant or part of a plant taken in the wild.

(10) 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.

(11) In this regulation—

“the implementation date” means—

(a) where the relevant State became a member State before 10th June 1994, 10th June 1994; and

(b) in any other case, the date on which the relevant State became a member State; and

“relevant State” means the State in whose territory the plant, or part of it, was taken in the wild.”