
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 475

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

Amendments to Part III

- 10.** In regulation 39 (protection of wild animals of European protected species)—
- (a) in paragraph (1)(a) to (c) after “deliberately” where it occurs in each of those paragraphs insert “or recklessly”;
 - (b) after paragraph (1) insert—

“(1A) Subject to the provisions of this Part, it is an offence to deliberately or recklessly, harass any wild animal of a European protected species included in Schedule 2 as a dolphin, porpoise or whale (cetacea).”;
 - (c) in paragraph (4)—
 - (i) in sub paragraph (a), after “killed”, in the second place where it occurs, insert “at or from a place in Scotland”;
 - (ii) omit “or” at the end of that sub paragraph;
 - (iii) in sub paragraph (b), after “sold” insert “at a place in Scotland”;
 - (iv) omit the words from “For this purpose” to the end; and
 - (v) at the end of sub-paragraph (b) add—

“, or

 - (c) that the animal or other thing in question had been killed at, taken from or sold at a place outwith Scotland and—
 - (i) that the act of killing, taking or sale would, if it had been committed in Scotland, have been lawful; or
 - (ii) that the animal or other thing in question had been brought from the place where it was killed, taken or sold in accordance with the relevant regulations”;
 - (d) after paragraph (4), insert—

“(4A) References in this regulation to—

 - (a) “lawful” and “lawfully” mean without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981⁽¹⁾;
 - (b) “the relevant regulations” means—
 - (i) Council Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade as last amended by Commission Regulation (EC) 834/04⁽²⁾; and

(1) 1981 (c. 69).

(2) O.J. No. L 61, 3.3.97, p.1. The latest amending regulation is at O.J. No. L 127, 29.04.04, p.40.

- (ii) Commission Regulation (EC) 1808/2001 on the implementation of that Council Regulation(3).
- (4B) Subject to the provisions of this Part, it is an offence to knowingly cause or permit to be done an act which is made unlawful by any of the provisions of this regulation.”; and
- (e) in paragraph (6)–
- (i) after “conviction” insert “to imprisonment for a term not exceeding six months or”; and
- (ii) at the end, add “, or to both”.
- 11.** In regulation 40 (exceptions from regulation 39)–
- (a) in paragraph (3)(c), for the words from “if” to the end substitute–
- “(“an unlawful act”) if he shows–
- (i) that each of the conditions specified in paragraph (3A) was satisfied in relation to the carrying out of the unlawful act; or
- (ii) that the unlawful act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.”; and
- (b) after paragraph (3), insert–
- “(3A) Those conditions are that–
- (a) the unlawful act was the incidental result of a lawful operation or other activity;
- (b) the person who carried out the lawful operation or other activity–
- (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
- (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
- (c) the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal of a European protected species, or the damage or destruction to the breeding site or resting place, in relation to which the unlawful act was carried out.”; and
- (c) after paragraph (6) insert–
- “(6A) A person authorised in accordance with paragraph (5) may not rely on the defence provided by paragraph (5) as respects any action taken at any time unless he notified the Scottish Ministers as soon as reasonably practicable after that time that he had taken the action.”.
- 12.** In regulation 41(6) (prohibition of certain methods of taking or killing wild animals)–
- (a) after “conviction” insert “to imprisonment for a term not exceeding six months or”; and
- (b) at the end add “, or to both”.
- 13.** In regulation 43 (protection of wild plants of European protected species)–
- (a) in paragraph (1) after “deliberately” insert “or recklessly”;
- (b) in paragraph (4), for the words from “if” to the end substitute–
- “(“an unlawful act”) if he shows that–

- (a) the unlawful act was the incidental result of a lawful operation or other activity;
 - (b) the person who carried out the lawful operation or other activity—
 - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
 - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
 - (c) the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent, such steps as were reasonably practicable in the circumstances to minimise the damage to the wild plant of a European protected species in relation to which the unlawful act was carried out.”;
- (c) after paragraph (5) insert—
- “(5A) 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.”; and
- (d) in paragraph (7)—
- (i) after “conviction” insert “to imprisonment for a term not exceeding six months or”;
 - (ii) for “4” substitute “5”; and
 - (iii) at the end add “, or to both”.
- 14.** In regulation 44(2) (grant of licences for certain purposes)—
- (a) in sub-paragraph (a) after “scientific” insert “, research”;
 - (b) in sub-paragraph (c) after “animals” insert “, including wild birds,”; and
 - (c) after sub-paragraph (c) insert—
- “(ca) conserving natural habitats;”.
- 15.** In regulation 46(2) (false statements made for obtaining licence)—
- (a) after “conviction” insert “to imprisonment for a term not exceeding six months or”;
 - (b) for “4” substitute “5”; and
 - (c) at the end add “, or to both”.