
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 80

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

PART II

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

10. Subject to regulation 31, for regulation 39 (protection of wild animals of European protected species) substitute—

“Protection of certain wild animals

39.—(1) It is an offence—

- (a) deliberately or recklessly to capture, injure or kill a wild animal of a European protected species;
- (b) deliberately or recklessly—
 - (i) to harass a wild animal or group of wild animals of a European protected species;
 - (ii) to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
 - (iii) to disturb such an animal while it is rearing or otherwise caring for its young;
 - (iv) to obstruct access to a breeding site or resting place of such an animal, or otherwise to deny the animal use of the breeding site or resting place;
 - (v) to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; or
 - (vi) to disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young;
- (c) deliberately or recklessly to take or destroy the eggs of such an animal; or
- (d) to damage or destroy a breeding site or resting place of such an animal.

(2) Subject to the provisions of this Part, it is an offence to deliberately or recklessly disturb any dolphin, porpoise or whale (cetacean).

(3) 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 (4) applies.

(4) This paragraph 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 part of such an animal.

(5) The offences in paragraph (1), (2) and (3) apply to all stages of the life of the animals to which they apply.

(6) Subject to paragraph (7), a person shall not be guilty of an offence under paragraph (3) if that person 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.

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

- (a) in respect of the offences in paragraph (3)(a) or (b) if—
 - (i) the animal in question is an animal of a European protected species, or the part or thing in question is derived from such an animal; and
 - (ii) the animal, part or thing in question was in the defender's possession, or transported by the defender, for the purpose of sale or exchange;
- (b) in respect of the offences in paragraph (3)(c) or (d), if the animal is an animal of a European protected species, or the part or thing in question is derived from such an animal.

(8) For the purposes of paragraph (6) an animal, or part of an animal, shall be 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 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 from the wild elsewhere without contravention of the law of the country or territory from where it was taken.

(9) A person shall not be guilty of an offence under paragraph (3) if that person shows that the animal, or the animal from which the part or thing in question is derived—

- (a) is of a species listed in the second column of the table in Schedule 2A 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* and was not from a naturally occurring population;
- (c) is of the species *Ovis gmelini musimon* and was not from a naturally occurring population in Corsica or Sardinia; or
- (d) is of the species *Coregonus oxyrinchus* and either was from Finland or was not from an anadromous population.

(10) 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.

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

- (a) for an offence under paragraph (1) or (2), the animal in question shall be presumed to have been a wild animal; and
- (b) for an offence under paragraph (3) (as the case may be)—

- (i) the animal or part of the animal in question shall be presumed to have been taken from the wild; or
- (ii) the part or thing in question shall be presumed to be from an animal or part of an animal taken from the wild.

(12) Subject to paragraph (13), 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.

(13) A person guilty of an offence under paragraph (3) insofar as it relates to any live or dead animal or part of an animal, or any part of, or anything derived from an animal or part of an animal, which is of a species or subspecies which was not listed in Annex IV(a) to Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora as it stood immediately before it was amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

(14) 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 animal, or part of it, was taken from the wild.”.