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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*

**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

(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.

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.

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