
STATUTORY INSTRUMENTS

2017 No. 1012

The Conservation of Habitats and Species Regulations 2017

PART 3

Protection of species

Protection of plants

Protection of certain wild plants: defences

48.—(1) A person is not guilty of the offence under regulation 47(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 47(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) was being or had 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 47(2).

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

- (a) in respect of the offences in regulation 47(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 47(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 any of the following sections of the WCA 1981—
 - (i) section 13 (protection of wild plants);
 - (ii) section 17 (false statements made for obtaining registration or licence etc.);
 - (iii) section 18 (attempts to commit offences etc.) which relates to an offence under section 13;
 - (b) an offence under any of the following provisions—
 - (i) regulation 47;
 - (ii) regulation 59, where that offence relates to the obtaining of a licence under regulation 55; or
 - (iii) regulation 122, where that offence relates to an offence under regulation 47;
 - (c) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
 - (d) an offence under regulation 49 (offences relating to wild plants listed in Annex IV(b) to the Habitats Directive) or 57 (false statements made for obtaining licence) of the Offshore Marine Conservation Regulations, an offence of attempting to commit an offence under regulation 49 of those Regulations, or an offence under regulation 71 of those Regulations (possession of means of committing offence) which relates to an offence under regulation 49 of those Regulations.