

STATUTORY INSTRUMENTS

1994 No. 2716

The Conservation (Natural Habitats, &c.) Regulations 1994

[^{F1}PART III

PROTECTION OF SPECIES

[^{F1}Protection of animals

Textual Amendments

- F1** Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3), 12.12.2014 in so far as not already in force) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

European protected species of animals

38. The species of animals listed in Annex IV(a) to the Habitats Directive whose natural range includes any area in Great Britain are listed in Schedule 2 to these Regulations.

References in these Regulations to a “European protected species” of animal are to any of those species.

Commencement Information

- II** Reg. 38 in force at 30.10.1994, see [reg. 1\(2\)](#)

[^{F2}Protection of wild animals of European protected species

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; ^{F3}...
 - (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; [^{F4}or
 - (vii) to disturb such an animal while it is migrating or hibernating;]
 - (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—
- [^{F5}(aa) it was taken from the wild in the United Kingdom, without contravention of the law and before 10th June 1994;]
 - (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) [^{F6}A person guilty of an offence under this regulation is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).]
- ^{F7}(13)
- (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.]

Textual Amendments

- F2** Reg. 39 substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **10** (with reg. 31)
- F3** Word in reg. 39(1)(b)(v) omitted (26.1.2009) by virtue of [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), **4(a)**
- F4** Reg. 39(1)(b)(vii) and word inserted (26.1.2009) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), **4(b)**
- F5** Reg. 39(8)(aa) inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **16**; 2020 c. 1, Sch. 5 para. 1(1)

- F6** Reg. 39(12) substituted (30.11.2020) by *Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020* (asp 14), ss. **9(2)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)
- F7** Reg. 39(13) omitted (25.2.2008) by virtue of *The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2008* (S.S.I. 2008/17), regs. 1(1), **2(3)**

[^{F8}Exceptions from regulation 39

40.—(1) A person shall not be guilty of an offence under regulation 39(1)(a) or (b), (2), or (3) (a) or (b), if that person shows that what was done—

- (a) was in relation to an animal that had been seriously disabled otherwise than by that person's unlawful act and there was no reasonable chance of its recovering; and
- (b) was done solely for one or more of the purposes of—
 - (i) ending the animal's life in a humane manner; or
 - (ii) where the animal's life had been so ended, disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(2) A person shall not be guilty of the offence under regulation 39(1)(a) of deliberately or recklessly capturing a wild animal of a European protected species, or an offence under regulation 39(3)(a) or (b), if that person shows that what was done—

- (a) was in relation to an animal that had been disabled otherwise than by that person's unlawful act; and
- (b) was done solely for one or more of the purposes of—
 - (i) tending it and releasing it when no longer disabled; or
 - (ii) releasing it after it had been tended,
 and was done in a manner or in circumstances unlikely to cause the animal unnecessary suffering.

(3) A person shall not be guilty of an offence by reason of any act made unlawful by regulation 39 if that person shows that the act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.

[^{F9}(4) The exceptions to regulation 39 in paragraphs (1) and (2) shall not apply where it is shown that—

- (a) there was a satisfactory alternative to what was done; or
- (b) what was done was detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.]]

Textual Amendments

- F8** Reg. 40 substituted (S.) (15.2.2007) by *The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007* (S.S.I. 2007/80), regs. 2, **11**
- F9** Reg. 40(4) inserted (26.1.2009) by *The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2008* (S.S.I. 2008/425), regs. 1(1), **5**

Prohibition of certain methods of taking or killing wild animals

41.—(1) This regulation applies in relation to the taking or killing of a wild animal—

- (a) of any of the species listed in Schedule 3 to these Regulations (which shows the species listed in Annex V(a) to the Habitats Directive, and to which Article 15 applies, whose natural range includes any area of Great Britain), or
 - (b) of a European protected species, where the taking or killing of such animals is permitted in accordance with these Regulations.
- (2) It is an offence to use for the purpose of taking or killing any such wild animal—
- [^{F10}(a) any means listed in paragraphs 1 or 2 of Schedule 3A;
 - (b) any form of taking or killing from the modes of transport listed in paragraph 3 of Schedule 3A; or]
 - (c) any other means of taking or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal listed in Schedule 3 to these Regulations or any European protected species of animal.
- ^{F11}(3)
- ^{F11}(4)
- ^{F11}(5)
- [^{F12}(6) A person guilty of an offence under this regulation is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).]

Textual Amendments

- F10** Reg. 41(2)(a)(b) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **17(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Reg. 41(3)-(5) omitted (31.12.2020) by virtue of [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **17(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Reg. 41(6) substituted (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. **9(3)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)

Commencement Information

- I2** Reg. 41 in force at 30.10.1994, see [reg. 1\(2\)](#)

[^{F13}**Monitoring incidental capture and killing**

41A.—(1) Scottish Natural Heritage must make arrangements in accordance with paragraphs (2) to (5) for monitoring the incidental capture or killing (a “monitoring system”) of animals of the species listed in Annex IV(a) to the Habitats Directive.

(2) Scottish Natural Heritage must, from time to time, review the monitoring system and, if they think it appropriate, revise it.

(3) In light of the information gathered from the monitoring system, Scottish Natural Heritage must—

- (a) make arrangements for the carrying out of such research, or
- (b) where appropriate, advise the Scottish Ministers on such conservation measures

as appears or appear to Scottish Natural Heritage to be necessary to ensure that such incidental capture or killing does not have a significant negative impact on the species in question.

(4) In implementing that monitoring system Scottish Natural Heritage must, in relation to the species of animal listed in Annex IV(a) to the Habitats Directive which are found in Scotland—

- (a) identify the risks of incidental capture or killing to which those species are subject, and the activities which give rise to such risks;
- (b) maintain a record of instances of incidental capture or killing of animals of those species of which Scottish Natural Heritage is aware as a result of the surveillance carried out under regulation 37A, the monitoring carried out under this regulation, or otherwise;
- (c) assess to what extent monitoring of incidental capture or killing is needed, having regard to—
 - (i) the risks identified under sub-paragraph (a);
 - (ii) the instances of incidental capture or killing recorded under sub-paragraph (b);
 - (iii) whether the species is a priority species; and
 - (iv) the conservation status of the species; and
- (d) ensure that monitoring of incidental capture or killing is carried out.

(5) Monitoring for the purposes of this regulation may be carried out by—

- (a) Scottish Natural Heritage; or
- (b) any other body or person—
 - (i) pursuant to an agreement with Scottish Natural Heritage, provided that Scottish Natural Heritage is satisfied as to the standards and methods of monitoring used by that body or person; or
 - (ii) as a condition of a licence or other authorisation granted by a competent authority.

(6) The Scottish Ministers may, from time to time, give directions to Scottish Natural Heritage as to the exercise of its functions under paragraphs (1) to (5).]

Textual Amendments

F13 Reg. 41A substituted (26.1.2009) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), 6

Protection from incidental capture and killing

^{F1}**41B.**]

Changes to legislation:

There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994, Cross Heading: Protection of animals.