
STATUTORY INSTRUMENTS

1994 No. 2716

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

PART III

PROTECTION OF SPECIES

Protection of animals

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.

Protection of wild animals of European protected species

39.—(1) It is an offence—

- (a) deliberately to capture or kill a wild animal of a European protected species;
- (b) deliberately to disturb any such animal;
- (c) deliberately 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) It is an offence to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild animal of a European protected species, or any part of, or anything derived from, such an animal.

(3) Paragraphs (1) and (2) apply to all stages of the life of the animals to which they apply.

(4) A person shall not be guilty of an offence under paragraph (2) if he shows—

- (a) that the animal had not been taken or killed, or had been lawfully taken or killed, or
- (b) that the animal or other thing in question had been lawfully sold (whether to him or any other person).

For this purpose “lawfully” means without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981⁽¹⁾.

(5) In any proceedings for an offence under this regulation, the animal in question shall be presumed to have been a wild animal unless the contrary is shown.

(6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(1) 1981 c. 69.

Exceptions from regulation 39

40.—(1) Nothing in regulation 39 shall make unlawful—

- (a) anything done in pursuance of a requirement by the agriculture Minister under section 98 of the Agriculture Act 1947⁽²⁾ or section 39 of the Agriculture (Scotland) Act 1948⁽³⁾ (prevention of damage by pests); or
- (b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981⁽⁴⁾.

(2) Nothing in regulation 39(1)(b) or (d) shall make unlawful anything done within a dwelling-house.

(3) Notwithstanding anything in regulation 39, a person shall not be guilty of an offence by reason of—

- (a) the taking of a wild animal of a European protected species if he shows that the animal had been disabled otherwise than by his unlawful act and was taken solely for the purpose of tending it and releasing it when no longer disabled;
- (b) the killing of such an animal if he shows that the animal has been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering; or
- (c) any act made unlawful by that regulation if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.

(4) A person shall not be entitled to rely on the defence provided by paragraph (2) or (3)(c) as respects anything done in relation to a bat otherwise than in the living area of a dwelling-house unless he had notified the appropriate nature conservation body of the proposed action or operation and allowed them a reasonable time to advise him as to whether it should be carried out and, if so, the method to be used.

(5) Notwithstanding anything in regulation 39 a person—

- (a) being the owner or occupier, or any person authorised by the owner or occupier, of the land on which the action authorised is taken, or
- (b) authorised by the local authority for the area within which the action authorised is taken,

shall not be guilty of an offence by reason of the killing or disturbing of an animal of a European protected species if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs, crops, vegetables, fruit, growing timber or any other form of property or fisheries.

(6) A person may not rely on the defence provided by paragraph (5) as respects action taken at any time if it had become apparent before that time that the action would prove necessary for the purpose mentioned in that paragraph and either—

- (a) a licence under regulation 44 authorising that action had not been applied for as soon as reasonably practicable after that fact had become apparent, or
- (b) an application for such a licence had been determined.

(7) In paragraph (5) “local authority” means—

- (a) in relation to England and Wales, a county, district or London borough council and includes the Common Council of the City of London, and
- (b) in Scotland, a regional, islands or district council.

(2) 1947 c. 48; section 98 was amended by the Prevention of Damage by Pests Act 1949 (c. 55) and the Pests Act 1954 (c. 68).

(3) 1948 c. 45; section 39 was amended by the Prevention of Damage by Pests Act 1949 (c. 55), the Pests Act 1954 (c. 68) and the Deer (Amendment) (Scotland) Act 1982 (c. 19).

(4) 1981 c. 22; the Act was amended by the Animal Health and Welfare Act 1984 (c. 40) and the Environmental Protection Act 1990 (c. 43).

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—
- (a) any of the means listed in paragraph (3) or (4) below, or
 - (b) any form of taking or killing from the modes of transport listed in paragraph (5) below.
- (3) The prohibited means of taking or killing of mammals are—
- (a) blind or mutilated animals used as live decoys;
 - (b) tape recorders;
 - (c) electrical and electronic devices capable of killing or stunning;
 - (d) artificial light sources;
 - (e) mirrors and other dazzling devices;
 - (f) devices for illuminating targets;
 - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
 - (h) explosives;
 - (i) nets which are non-selective according to their principle or their conditions of use;
 - (j) traps which are non-selective according to their principle or their conditions of use;
 - (k) crossbows;
 - (l) poisons and poisoned or anaesthetic bait;
 - (m) gassing or smoking out;
 - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
- (4) The prohibited means of taking or killing fish are—
- (a) poison;
 - (b) explosives.
- (5) The prohibited modes of transport are—
- (a) aircraft;
 - (b) moving motor vehicles.
- (6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.