
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 475

**The Conservation (Natural Habitats, &c.)
Amendment (Scotland) Regulations 2004**

Amendments to Part III

- 10.** In regulation 39 (protection of wild animals of European protected species)–
- (a) in paragraph (1)(a) to (c) after “deliberately” where it occurs in each of those paragraphs insert “or recklessly”;
 - (b) after paragraph (1) insert–
 - “(1A) Subject to the provisions of this Part, it is an offence to deliberately or recklessly, harass any wild animal of a European protected species included in Schedule 2 as a dolphin, porpoise or whale (cetacea).”;
 - (c) in paragraph (4)–
 - (i) in sub paragraph (a), after “killed”, in the second place where it occurs, insert “at or from a place in Scotland”;
 - (ii) omit “or” at the end of that sub paragraph;
 - (iii) in sub paragraph (b), after “sold” insert “at a place in Scotland”;
 - (iv) omit the words from “For this purpose” to the end; and
 - (v) at the end of sub-paragraph (b) add–
 - “, or
 - (c) that the animal or other thing in question had been killed at, taken from or sold at a place outwith Scotland and–
 - (i) that the act of killing, taking or sale would, if it had been committed in Scotland, have been lawful; or
 - (ii) that the animal or other thing in question had been brought from the place where it was killed, taken or sold in accordance with the relevant regulations”;
 - (d) after paragraph (4), insert–
 - “(4A) References in this regulation to–
 - (a) “lawful” and “lawfully” mean without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981⁽¹⁾;
 - (b) “the relevant regulations” means–
 - (i) Council Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating trade as last amended by Commission Regulation (EC) 834/04⁽²⁾; and

(1) 1981 (c. 69).

(2) O.J. No. L 61, 3.3.97, p.1. The latest amending regulation is at O.J. No. L 127, 29.04.04, p.40.

(ii) Commission Regulation (EC) 1808/2001 on the implementation of that Council Regulation(3).

(4B) 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.”; and

(e) in paragraph (6)–

(i) after “conviction” insert “to imprisonment for a term not exceeding six months or”;
and

(ii) at the end, add “, or to both”.