
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 475

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

Amendments to Part III

- 11.** In regulation 40 (exceptions from regulation 39)–
- (a) in paragraph (3)(c), for the words from “if” to the end substitute–
 - “(“an unlawful act”) if he shows–
 - (i) that each of the conditions specified in paragraph (3A) was satisfied in relation to the carrying out of the unlawful act; or
 - (ii) that the unlawful act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.”; and
 - (b) after paragraph (3), insert–
 - “(3A) Those conditions are that–
 - (a) the unlawful act was the incidental result of a lawful operation or other activity;
 - (b) the person who carried out the lawful operation or other activity–
 - (i) took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
 - (ii) did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and
 - (c) the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal of a European protected species, or the damage or destruction to the breeding site or resting place, in relation to which the unlawful act was carried out.”; and
 - (c) after paragraph (6) insert–
 - “(6A) A person authorised in accordance with paragraph (5) may not rely on the defence provided by paragraph (5) as respects any action taken at any time unless he notified the Scottish Ministers as soon as reasonably practicable after that time that he had taken the action.”.