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## STATUTORY INSTRUMENTS

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# 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.

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#### **Commencement Information**

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

#### **Protection of wild animals of European protected species**

**39.—(1)** It is an offence—

- (a) deliberately [<sup>F1</sup>or recklessly] to capture or kill a wild animal of a European protected species;
- (b) deliberately [<sup>F1</sup>or recklessly] to disturb any such animal;
- (c) deliberately [<sup>F1</sup>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.

[<sup>F2</sup>(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).]

(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 [<sup>F3</sup>at or from a place in Scotland], [<sup>F4</sup>or]

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- (b) that the animal or other thing in question had been lawfully sold [<sup>F5</sup>at a place in Scotland] (whether to him or any other person) [<sup>F6</sup>, 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]

[<sup>F7</sup>For this purpose “lawfully” means without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981(1).]

[<sup>F8</sup>(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;
- (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; and
  - (ii) Commission Regulation (EC) 1808/2001 on the implementation of that Council Regulation.

(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.]

(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 [<sup>F9</sup>to imprisonment for a term not exceeding six months or] to a fine not exceeding level 5 on the standard scale [<sup>F10</sup>, or to both].

#### Textual Amendments

- F1** Words in reg. 39(1)(a)-(c) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **10(a)** (with regs. 20, 21)
- F2** Reg. 39(1A) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **10(b)** (with regs. 20, 21)
- F3** Words in reg. 39(4)(a) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **10(c)(i)** (with regs. 20, 21)
- F4** Word in reg. 39(4)(a) omitted (S.) (29.11.2004) by virtue of The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **10(c)(ii)** (with regs. 20, 21)
- F5** Words in reg. 39(4)(b) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **10(c)(iii)** (with regs. 20, 21)
- F6** Reg. 39(4)(c) and word inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **10(c)(v)** (with regs. 20, 21)
- F7** Words in reg. 39(4) omitted (S.) (29.11.2004) by virtue of The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **10(c)(iv)** (with regs. 20, 21)
- F8** Reg. 39(4A)(4B) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **10(d)** (with regs. 20, 21)
- F9** Words in reg. 39(6) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **10(e)(i)** (with regs. 20, 21)

**F10** Words in [reg. 39\(6\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\), 10\(e\)\(ii\)](#) (with [regs. 20, 21](#))

#### Commencement Information

**I2** [Reg. 39](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

### 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 [<sup>F11</sup>if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.][<sup>F11</sup>(“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.]

[<sup>F12</sup>(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.]

(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 \(c. 43\)](#).

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(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.

[<sup>F13</sup>(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.]

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

(a) in relation to England and Wales, a county, [<sup>F14</sup>county borough,] 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.

#### Textual Amendments

- F11** Words in [reg. 40\(3\)\(c\)](#) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\)](#), **11(a)** (with [regs. 20, 21](#))
- F12** [Reg. 40\(3A\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\)](#), **11(b)** (with [regs. 20, 21](#))
- F13** [Reg. 40\(6A\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\)](#), **11(c)** (with [regs. 20, 21](#))
- F14** Words in [reg. 40\(7\)\(a\)](#) inserted (E.W.) (1.4.1996) by [The Local Government Reorganisation \(Wales\) \(Consequential Amendments\) Order 1996 \(S.I. 1996/525\)](#), [arts. 1, 3](#), **Sch. para. 18(3)**

#### Commencement Information

- I3** [Reg. 40](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

### 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 [<sup>F15</sup>to imprisonment for a term not exceeding six months or] to a fine not exceeding level 5 on the standard scale [<sup>F16</sup>, or to both ].

#### Textual Amendments

- F15** Words in [reg. 41\(6\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\)](#), **12(a)** (with [regs. 20, 21](#))
- F16** Words in [reg. 41\(6\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\)](#), **12(b)** (with [regs. 20, 21](#))

#### Commencement Information

- I4** [Reg. 41](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

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