
STATUTORY INSTRUMENTS

2017 No. 1012

The Conservation of Habitats and Species Regulations 2017

PART 3

Protection of species

Protection of animals

Protection of certain wild animals: defences

44.—(1) A person (“P”) is not guilty of the offence under regulation 43(1)(a) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 43(3)(a) or (b), if P shows that the act in question—

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

(2) A person (“P”) is not guilty of an offence under regulation 43(1)(a) or 43(3)(a) or (b) if P shows that the act in question—

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

(3) A person is not guilty of the offence under regulation 43(1)(a) of deliberately injuring a wild animal of a European protected species if that person shows that this was done solely—

- (a) for the purpose of taking a sample by virtue of any of the sampling provisions; or
- (b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of an offence specified in paragraph (11) (wherever the offence was committed).

(4) A person is not guilty of an offence under regulation 43(3)(a) or (b) if that person shows that the act in question was done solely for one or more of the purposes of—

- (a) investigating whether an offence specified in paragraph (11) was being or had been committed (wherever the offence was committed);
- (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or
- (c) giving effect to an order under any of the forfeiture provisions.

Status: Point in time view as at 06/11/2019. This version of this provision has been superseded.

Changes to legislation: The Conservation of Habitats and Species Regulations 2017, Section 44 is up to date with all changes known to be in force on or before 08 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(5) Subject to paragraph (6), a person who 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 is not guilty of an offence under regulation 43(3).

(6) The defence in paragraph (5) does not apply—

(a) in respect of the offences in regulation 43(3)(a) and (b) if—

(i) the animal or part in question is an animal, or part of an animal, of a European protected species or of the species *Lacerta vivipara pannonica* (viviparous lizard) or *Lycaena dispar* (the large copper butterfly), or the thing in question is derived from such an animal; and

(ii) the animal, part or thing in question was in the defendant's possession or control, or transported by the defendant, for the purpose of sale or exchange; or

(b) in respect of the offences in regulation 43(3)(c) and (d), if the animal or part in question is an animal, or part of an animal, of any of the species referred to in sub-paragraph (a)(i), or the thing in question is derived from such an animal.

(7) For the purposes of paragraph (5) an animal, or part of an animal, is treated as having been lawfully taken from the wild if—

(a) it was taken from the wild in the European territory of a member State, being territory to which the TFEU applies, without contravention of the law of that member State and before the implementation date; or

(b) it was taken from the wild elsewhere.

(8) A person is not guilty of an offence under regulation 43(3) if that person shows that the animal or part of the animal, or the animal from which the thing in question is derived—

(a) is of a species listed in the second column of Schedule 3 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* (wild goat) and was not from a naturally occurring population;

(c) is of the subspecies *Ovis gmelini musimon* (European mouflon) and was not from a naturally occurring population in Corsica or Sardinia; or

(d) is of the species *Coregonus oxyrhynchus* (houting) and either was from Finland or was not from an anadromous population.

(9) The defences in paragraphs (1) to (4) do not apply where it is shown by the prosecution that the defendant's action did not satisfy the conditions in paragraph (10).

(10) Those conditions are that—

(a) there was no satisfactory alternative; and

(b) the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

(11) For the purposes of paragraphs (3)(b) and (4)(a) and (b), the specified offences are—

(a) an offence under any of the following sections of the WCA 1981—

(i) section 9 (protection of certain wild animals) ^{M1};

(ii) section 11 (prohibition of certain methods of killing or taking wild animals) ^{M2};

(iii) section 17 (false statements made for obtaining registration or licence etc.) ^{M3}; or

(iv) section 18 (attempts to commit offences etc.) which relates to an offence under section 9 or 11;

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- (b) an offence under any of the following provisions—
 - (i) regulation 43 (protection of certain wild animals: offences);
 - (ii) regulation 45 (prohibition of certain methods of capturing or killing wild animals);
 - (iii) regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants); or
 - (iv) regulation 122 (attempts and possession of means of committing offence), where that offence relates to an offence under regulation 43 or 45;
- (c) an offence under the [F12018] Regulations or an offence of attempting to commit such an offence; or
- (d) an offence under regulation 45 (protection of wild animals listed in Annex IV(a) to the Habitats Directive), 47 (prohibition of certain methods of capturing or killing wild animals) or 57 (false statements made for obtaining licence) of the Offshore Marine Conservation Regulations, an offence of attempting to commit an offence under regulation 45 or 47 of those Regulations, or an offence under regulation 71 of those Regulations (possession of means of committing offence) which relates to an offence under regulation 45 or 47 of those Regulations.

(12) For the purposes of any proceedings for an offence under regulation 43(3), the common names given in parentheses in paragraphs (6) and (8) are to be disregarded.

Textual Amendments

- F1** Word in [reg. 44\(11\)\(c\)](#) substituted (6.11.2019) by [The Control of Trade in Endangered Species \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/1354\)](#), regs. 1, **6(2)**

Marginal Citations

- M1** Section 9 was amended by the [Countryside and Rights of Way Act 2000 \(c. 37\)](#), [Schedule 12](#), [paragraph 5\(b\)](#); and by [S.I. 2007/1843](#) and [2011/1043](#).
- M2** Section 11 was amended by the [Wildlife and Countryside \(Amendment\) Act 1991 \(c. 39\)](#), [section 2](#).
- M3** Section 17 was amended by the [Countryside and Rights of Way Act 2000 \(c. 37\)](#), [Schedule 16](#), [Part 4](#).

Status:

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