

Legislative protection for herpetofauna

Scotland

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LEGISLATION

Legislative protection for the UK's herpetofauna- Scotland

Wildlife legislation in the UK is complicated, both through its steady evolution and amendment creating numerous different acts, regulations and statutory orders, etc, but also because the Environment is a devolved function for the different country administrations in the UK. Therefore different legislation (and policy) has developed in the different countries of the UK. It is also further complicated by the interaction between national, European and international legislation and jurisprudence. Different levels of protection apply to different species. The summary below identifies the protection afforded to reptile and amphibian species in Scotland through nature conservation legislation; we have not addressed site/habitat protection mechanisms. Some additional protection can be afforded through animal welfare legislation and through other measures, such as land use planning regimes.

Protection for herpetofauna in Scotland

A. European Protected Species (i.e. sand lizard*, natterjack toad and great crested newt and marine turtles) are protected against:

- (a) deliberate or reckless capture, injuring or killing;
- (b) deliberate or 'reckless'
 - (i) harassment of an animal or group of animals;
 - (ii) disturbance of such an animal while it is occupying a structure or place which it uses for shelter or

- protection;
- (iii) disturbance of such an animal while it is rearing or otherwise caring for its young;
- (iv) obstructing access to a breeding site or resting place of such an animal, or otherwise denying the animal use of the breeding site or resting place;
- (v) disturbance of such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; or
- (vi) disturbing such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young;
- (c) deliberate or reckless taking or destroying the eggs of such an animal; or
- (d) damaging or destroying a breeding site or resting place of such an animal.
- (e)** any person
 - (i) possessing or controlling;
 - (ii) transporting;
 - (iii) selling or exchanging; or
 - (iv) offering for sale or exchange,any live or dead animal or part of an animal or anything derived from such an animal which has been taken from the wild and which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive.

unless the animal from which the part or the thing in question is derived, was lawfully taken from the wild (i.e. taken from the wild in the European Union without contravention of appropriate domestic legislation and before the implementation date of the Habitats Directive (in that Country e.g. 1994 in UK)

or if it was taken from elsewhere).

** This section also covers all other species listed on Annex IV of the Habitats Directive.

These relate to 'wild animals' and apply regardless of the stage of the life of the animal in question. Unless the contrary is shown, in any proceedings for an offence under paragraph the animal in question is to be presumed to have been a wild animal. Note that defences and a licensing regime are provided via the Habitats Regulations 1994 *as amended*

This protection is solely through the Conservation (Natural Habitats, &c.) Regulations 2004 *as amended*

The legislation & section numbers, and amendments:

[The Conservation \(Natural Habitats, etc\) Regulations 1994](#) as amended by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007](#). This amending regulation deletes all European Protected Species from the Wildlife & Countryside Act Sch 5 as it relates to Scotland, and hence protection is solely via the Conservation (Natural Habitats, &c.) Amendment Regulations 2004 *as amended*.

NOTE * though the sand lizard is not native to Scotland, an introduced population has been self sustaining on the Isle of Coll since the 1970s. That this has not been excluded from Schedule 2 for Scotland means that this species is protected by these provisions.

B. Widespread reptiles and amphibians

(i.e. reptiles (adder, grass snake*, common lizard and slow worm) and amphibians (common frog, common toad, smooth newt, palmate newt)

Reptiles only (adder, grass snake*, common lizard and slow worm) are protected against:

(a) intentional or recklessly killing and injuring (note the provision in section 9(1) of Wildlife & Countryside Act 1981 prohibiting 'taking' does not apply to reptiles)

(b) Both reptiles (adder, grass snake*, common lizard and slow worm) and amphibians (common frog, common toad, smooth newt, palmate newt) are protected against:

(i) selling, offering or exposing for sale, or having in possession or transporting for the purpose of sale, any

live or dead wild animal or any part of, or anything derived from, such an animal; or

(ii) publishing or causing to be published any advertisement likely to be understood as conveying buying
or selling, or intending to buy or sell, any of those things.

The legislation relates only to 'wild animals', but in any proceedings the animal in question shall be presumed to have been a wild animal unless the contrary is shown. In Scotland offences also extend to include any person who knowingly causes or permits to be done an act which is made unlawful under this section of the Wildlife & Countryside Act.

This protection is solely through the Wildlife & Countryside Act 1981 as amended and defences and licensing provisions are provided within that Act.

The legislation & section numbers, and amendments:

Section 9 (1) part only for reptiles only and S 9 (5) (a) & (b) for reptiles and amphibians of The Wildlife & Countryside Act 1981 text version (& some amendments)[here](#) or PDF <http://www.jncc.gov.uk/page-3614> *as amended:*

(i) Inclusion of common lizards, grass snakes, slow worms on Sch 5: article 2 of the Wildlife and Countryside Act 1981 (Variation of Schedules) Order 1988, S.I.1988/288.http://www.opsi.gov.uk/si/si1988/Uksi19880288_en_1.htm

(ii) Inclusion of Adder on Sch 5: article 2 of the Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) Order 1991 S.I. 1991/361http://www.opsi.gov.uk/SI/si1991/Uksi_19910367_en_1.htm

(iii) Strengthening of various provisions e.g. making 'reckless' killing and injuring an offence through S. 50/ Sch. 6 of the Nature Conservation (Scotland) Act 2004 made some significant changes to legislation in Scotland that could affect herpetofauna conservation. This act can be viewed at:<http://www.opsi.gov.uk/legislation/scotland/acts2004/20040006.htm>

NOTE * while the grass snake has not been recorded in Scotland it is listed on Schedule 5 of the Wildlife & Countryside Act 1981; thus any 'wild animals' of this species will be protected in Scotland.