
STATUTORY INSTRUMENTS

2010 No. 490

The Conservation of Habitats and Species Regulations 2010

PART 3

PROTECTION OF SPECIES

Protection of plants

European protected species of plants

44.—(1) Schedule 5 (European protected species of plants) lists those species of plants listed in Annex IV(b) to the Habitats Directive which have a natural range which includes any area in Great Britain.

(2) References in this Part to a “European protected species” of plant are to any of those species.

Protection of certain wild plants: offences

45.—(1) It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence for any person—

- (a) to be in possession of, or to control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

anything to which this paragraph applies.

(3) Paragraph (2) applies to—

- (a) any live or dead plant or part of a plant—
 - (i) which has been taken in the wild, and
 - (ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV(b) to the Habitats Directive; and
- (b) anything derived from such a plant or any part of such a plant.

(4) Paragraphs (1) and (2) apply regardless of the stage of the biological cycle of the plant in question.

(5) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the plant in question is presumed to have been a wild plant.

(6) In any proceedings for an offence under paragraph (2), where it is alleged that a plant or a part of a plant was taken in the wild, it is presumed, unless the contrary is shown, that that plant or part of a plant was taken in the wild.

(7) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

Protection of certain wild plants: defences

46.—(1) A person is not guilty of the offence under regulation 45(1) of picking or cutting a wild plant of a European protected species if 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 (6) (wherever the offence was committed).

(2) A person is not guilty of an offence under regulation 45(2)(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 (6) is being or has 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.

(3) Subject to paragraph (4), a person who shows that the plant or part of the plant in question, or the plant or part of the plant from which the thing in question is derived, was lawfully taken in the wild, is not guilty of an offence under regulation 45(2).

(4) The defence in paragraph (3) does not apply—

- (a) in respect of the offences in regulation 45(2)(a) and (b) if—
 - (i) the plant or part in question is a plant, or part of a plant, of a European protected species, or the thing in question is derived from such a plant, and
 - (ii) the plant, 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 45(2)(c) and (d), if the plant or part in question is a plant, or part of a plant, of a European protected species, or the thing in question is derived from such a plant.

(5) For the purposes of paragraph (3) a plant, or part of a plant, is treated as having been lawfully taken in the wild if—

- (a) it was taken in 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 in the wild elsewhere.

(6) For the purposes of paragraphs (1)(b) and (2)(a) and (b), the specified offences are—

- (a) an offence under section 13 (protection of wild plants) or 17(1) (false statements made for obtaining registration or licence etc.) of the WCA 1981, or an offence under section 18 of that Act (attempts to commit offences etc.) which relates to an offence under section 13;
- (b) an offence under the following provisions of these Regulations—
 - (i) regulation 45 (protection of certain wild plants: offences),

(1) Section 17 was amended by the Countryside and Rights of Way Act 2000 (c. 37), Part 4 of Schedule 16.

- (ii) regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants), or
 - (iii) regulation 116 (attempts and possession of means of committing offence), where that offence relates to an offence under regulation 45;
- (c) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
- (d) an offence under regulation 43 (offences relating to wild plants listed in Annex IV(b) to the Habitats Directive) or 51 (false statements made for obtaining licence) of the 2007 Regulations, an offence of attempting to commit an offence under regulation 43 of those Regulations, or an offence under regulation 64 of those Regulations (possession of means of committing offence) which relates to an offence under regulation 43 of those Regulations.